

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	X	

AFFIDAVIT OF SERVICE

I, Darlene Calderon, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants LLC, the Court appointed claims and noticing agent for the Debtors in the above-captioned cases.

On June 9, 2008, I caused to be served the documents listed below (i) upon the parties listed on Exhibit A hereto via overnight mail and (ii) upon the parties listed on Exhibit B hereto via electronic notification:

- 1) Respondents' Corporate Disclosure Statement [a copy of which is attached hereto as Exhibit C]
- 2) Memorandum of Law in Support of Respondents' Opposition to Government's Motion for Order Withdrawing Reference [a copy of which is attached hereto as Exhibit D]
- 3) Declaration of Evan Gershbein in Support of Memorandum of Law in Support of Respondent's Opposition to Government's Motion to Withdraw Reference [a copy of which is attached hereto as Exhibit E]

Dated: June 12, 2008

/s/ Darlene Calderon

Darlene Calderon

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 12th day of June, 2008, by  
Darlene Calderon, proved to me on the basis of satisfactory evidence to be the person who  
appeared before me.

Signature: /s/ Vanessa R. Quiñones

Commission Expires: 3/20/11

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	08 Civ. 04487 (PKC)
	:	
DELPHI CORPORATION, <u>et. al.</u> ,	:	Bankr. Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	X	
DELPHI CORPORATION, DELPHI	:	Adversary Proceeding
AUTOMOTIVE SYSTEMS LLC, AND	:	No. 08-01038
DELPHI AUTOMOTIVE SYSTEMS	:	
SERVICES LLC,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	
-----	X	

RESPONDENTS' CORPORATE DISCLOSURE STATEMENT



Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, the undersigned counsel for Respondents Delphi Corporation, Delphi Automotive Systems LLC, and Delphi Automotive Systems Services LLC, non-governmental corporate parties in this civil proceeding, hereby certifies the following on behalf of Respondents:

Parent Corporations:

Respondent Delphi Corporation has no parent corporation.

Respondent Delphi Corporation is the parent corporation of Respondents Delphi Automotive Systems LLC and Delphi Automotive Systems Services LLC.

As of December 31, 2007, no publicly held companies owned 10% or more of Delphi Corporation's stock.

[signatures on next page]

Dated: New York, New York  
June 9, 2008

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DELPHI CORPORATION, <u>et. al.</u> ,	: Bankr. Case No. 05-44481 (RDD)
	: :
Debtors.	: (Jointly Administered)
	: :
----- X	
DELPHI CORPORATION, DELPHI	: Adversary Proceeding
AUTOMOTIVE SYSTEMS LLC, AND	: No. 08-01038
DELPHI AUTOMOTIVE SYSTEMS	: :
SERVICES LLC,	: :
	: :
Plaintiffs,	: :
	: :
- against -	: :
	: :
UNITED STATES OF AMERICA,	: :
	: :
Defendant.	: :
----- X	

MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS' OPPOSITION TO  
GOVERNMENT'S MOTION FOR ORDER WITHDRAWING REFERENCE

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#### Other Materials

Gen. Counsel Mem. 35396 (July 11, 1973) (explanatory memorandum prepared as background to Rev. Rul. 58-145) .....	5
News Release, Dep't Of Treasury, Treasury And IRS Clarify Employment Tax Treatment Of Payments Made On The Signing Or Cancellation Of An Employment Contract (Nov. 23, 2004), <u>available at</u> Treas. JS-2114, 2004 WL 2669356 (Dep't Treas.) .....	20

Respondents Delphi Corporation ("Delphi"), Delphi Automotive Systems LLC, and Delphi Automotive Systems Services LLC (collectively, "Plaintiffs") respectfully submit this memorandum of law in support of their opposition to the motion for withdrawal of the reference to the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") with respect to an adversary proceeding pursuant to 28 U.S.C. § 157(d) (the "Motion") filed by the Movant, the United States of America ("Defendant").

### PRELIMINARY STATEMENT

Plaintiffs commenced the adversary proceeding under section 505 of the Bankruptcy Code by filing a complaint (the "Complaint") in the Bankruptcy Court on January 18, 2008. As set forth in the Complaint, Plaintiffs seek an order and judgment directing the return of \$25,058,130 in overpayments of employment taxes paid under the Federal Insurance Contribution Act ("FICA") taxes plus interest. The employment taxes relate to payments made by Plaintiffs to certain union members upon ratification of collective bargaining agreements in 1999 and 2003, regardless of whether the union members provided any services to Plaintiffs.

Defendant seeks withdrawal of the reference with respect to the adversary proceeding largely on the basis of two erroneous contentions. Defendant asserts that, primarily because the adversary proceeding does not fall within the Bankruptcy Court's "core" jurisdiction, this Court should withdraw the reference as a matter of discretion. In fact, however, as discussed below, the adversary proceeding is plainly a core matter arising under section 505 of the Bankruptcy Code, and Defendant has not met its burden of proof for establishing that cause exists for discretionary withdrawal of the reference.

Defendant also alleges that because the adversary proceeding gives rise to material issues of "first impression" and will require the adjudication of "substantial questions"

under non-bankruptcy federal law, mandatory withdrawal of the reference applies. As set forth herein, however, the adversary proceeding presents no issues of first impression, and its adjudication will require only a straightforward application of non-bankruptcy federal law to determine that the payments were not in exchange for services and thus not wages for FICA purposes. Accordingly, mandatory withdrawal of the reference does not apply.

### BACKGROUND

#### A. The Chapter 11 Cases

On October 8 and 14, 2005, Delphi and certain of its subsidiaries and affiliates (including the two additional Plaintiffs identified above), debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), filed voluntary petitions in the Bankruptcy Court for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as then amended (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession under Bankruptcy Code sections 1107(a) and 1108. The Bankruptcy Court has ordered joint administration of the chapter 11 cases under In re Delphi Corporation, Case No. 05-44481 ("Bankr. Case"). (Bankr. Case Docket Nos. 28, 404.)

On September 6, 2007, the Debtors filed with the Bankruptcy Court a joint plan of reorganization and related disclosure statement. (Bankr. Case Docket Nos. 9263-9264.) Subsequently, on December 10, 2007, the Debtors filed an amended reorganization plan (the "Plan") and an amended disclosure statement (the "Disclosure Statement"). (Bankr. Case Docket Nos. 11386, 11388.) The Bankruptcy Court approved the adequacy of the Disclosure Statement and granted the related solicitation procedures motion with respect to the Plan on December 10, 2007. (Bankr. Case Docket No. 11389.) On January 25, 2008, the Bankruptcy Court entered an

order confirming the Plan (as modified), which became a final order on February 4, 2008.  
(Bankr. Case Docket No. 12359.)

On April 4, 2008, the Debtors announced that although they had met the conditions required to substantially consummate the Plan, including obtaining \$6.1 billion of exit financing, certain investors under the Plan (the "Plan Investors") refused to participate in a closing that was commenced but not completed. The Plan Investors also refused to fund their investments with Delphi. The Plan Investors delivered written notices purporting to terminate the Investment Agreement based on both alleged breaches by the Debtors and the failure of the Plan's effective date to occur by April 4, 2008. On May 16, 2008, Delphi filed complaints for damages and specific performance against the Plan Investors and related parties who refused to honor their equity financing commitments and refused to participate in the closing that would have led to Delphi's successful emergence from chapter 11. (Bankr. Case Docket Nos. 13622-13623.) The Debtors nevertheless are working with their stakeholders to evaluate their options to move forward with emerging from chapter 11 as soon as reasonably practicable.

B. The Adversary Proceeding

On January 18, 2008, Plaintiffs commenced the FICA adversary proceeding by filing the Complaint in the Bankruptcy Court. Defendant filed an answer to the Complaint in the Bankruptcy Court on May 13, 2008. The same day, Defendant moved to withdraw the reference and filed various exhibits and a supporting memorandum of law ("Defendant's Memorandum").

The material facts underlying the adversary proceeding are easily summarized. In 1999, pursuant to a tentative three-year national labor agreement, Delphi agreed to pay \$1,350 to each of its employees who was a union member in a certain "specified status" (including employees on temporary layoff or various forms of short-terms leave of absence, in addition to active employees), upon ratification of the 1999 collectively bargained national labor agreement

was ratified by the union membership. In 2003, Delphi agreed to make a payment of \$3,000 to each union member employee subject to similar conditions, again payable upon ratification of the 2003 national labor agreement by the union membership. In each instance the payments were made without regard to whether the union member had voted to ratify the agreement, without regard to the union member's historic length of service or rate of pay, and without regard to whether the union member had performed or continued to perform services for Delphi. (Compl. ¶¶ 14-15, 18, 19.) Plaintiffs timely filed refund claims with respect to both the 1999 and 2003 payments (the "1999 Refund Claims" and the "2003 Refund Claims"). (Compl. ¶¶ 24, 33.)

As set forth in the Complaint, nearly 50 years ago, the Internal Revenue Service ("IRS") issued a ruling that an employer's payments made to an individual solely for signing an employment contract, and not conditioned on the performance of future services or continued employment, did not constitute "wages." See Rev. Rul. 58-145, 1958-1 C.B. 360. While Plaintiffs' 1999 Refund Claims were pending before the IRS, and with full knowledge of the 1999 Refund Claims and similar claims by other taxpayers, the IRS revoked Revenue Ruling 58-145. The revocation was announced in Revenue Ruling 2004-109, 2004-2 C.B. 958, published on November 23, 2004, in which the IRS set forth a previously unstated principle for analyzing the wage treatment of a "ratifying bonus pursuant to a collective bargaining agreement."

In Revenue Ruling 58-145, the IRS noted that whether or not the payment was in respect of a new employee or a new contract for an existing employee, the determining consideration was whether the payment was "predicated on continued employment." If not, the amount was not to be treated as wages and therefore was not subject to FICA withholding. The rationale behind Revenue Ruling 58-145 (as explained by the IRS attorneys who drafted the ruling) was that a signing bonus is simply not compensation for personal services, but is paid for

the promises made by the individual in agreeing to be bound by the employment contract that the bonus served as an inducement to sign. See Gen. Counsel Mem. 35396 (July 11, 1973) (explanatory memorandum prepared as background to Rev. Rul. 58-145).

In contrast, the IRS took the unprecedented position in Revenue Ruling 2004-109, without the benefit of public notice and comment, that all amounts paid to employees are wages unless "the employee provides clear, separate, and adequate consideration for the employer's payment that is not dependent upon the employer-employee relationship." Revenue Ruling 2004-109 provides that the IRS will not apply the position taken in that ruling to any signing bonus, sign-on fee, or similar amount paid to an employee in connection with the employee's initial employment with the employer under a sign-on agreement or other contract entered into before January 12, 2005 if the amount is paid under facts and circumstances that are substantially the same as those of Revenue Ruling 58-145. By contrast, the IRS applies Revenue Ruling 2004-109 on a retroactive basis to any signing bonus, sign-on fee, or similar amount paid to an employee that is not incurred in connection with the employee's initial employment.

### ARGUMENT

#### THE ADVERSARY PROCEEDING SHOULD REMAIN IN THE BANKRUPTCY COURT

A. The Scope Of Bankruptcy Court Jurisdiction And The Standard For Withdrawal Of The Reference

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Federal district courts have original and non-exclusive jurisdiction over all civil proceedings arising under title 11, or arising in or related to cases under title 11, of the United States Code, 28 U.S.C. § 1334(a), and may refer these bankruptcy civil proceedings to the bankruptcy courts. See 28 U.S.C. § 157(a). In this district, the reference of bankruptcy civil proceedings to the bankruptcy courts is made automatically by standing order. See Standing Order of Reference signed by Acting Chief Judge Robert J. Ward, dated July 10, 1984.



Bankruptcy courts may "hear and determine . . . all core proceedings arising under title 11, or arising in a case under title 11." 28 U.S.C. § 157(b). Section 157(b)(2) of title 28 does not define "core proceeding" but contains a non-exclusive list of core proceedings under section 157(b). "A proceeding is core pursuant to § 157 if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case." Brooks Fashion Stores, Inc. v. Mich. Employment Sec. Comm'n (In re Brooks Fashion Stores, Inc.), 124 B.R. 436, 441 (Bankr. S.D.N.Y. 1991) (citing Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987)). In addition, a bankruptcy court may "hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11." 28 U.S.C. § 157(c)(1). In such matters, however, absent the parties' consent, the bankruptcy court submits to the district court proposed findings of fact and conclusions of law, which are reviewed de novo. Id.

Congress established this jurisdictional structure in 1984 following the Supreme Court's ruling in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982), which held that the previous grant of jurisdiction to the bankruptcy courts was overly expansive and unconstitutional. In response to Marathon, "Congress reshaped the jurisdictional relationship between the district courts and the bankruptcy courts . . . by making the bankruptcy courts delegated adjuncts of the district courts." Universal Oil Ltd. v. Allfirst Bank (In re Millenium Seacarriers, Inc.), 419 F.3d 83, 96 (2d Cir. 2005).

Under limited conditions, the district court may withdraw the reference to the bankruptcy court with respect to a civil proceeding (or any part thereof), as follows:

The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding

requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

28 U.S.C. § 157(d). Thus, in some circumstances, a district judge has discretion to withdraw the reference, whereas in others, withdrawal of the reference is mandatory. In other words, although "[a]n application to withdraw the reference may be granted 'for cause shown.' The reference shall be withdrawn 'if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.'" Space Sys./Loral, Inc. v. Int'l Launch Servs., Inc. (In re Loral Space & Commc'ns), No. 04 Civ. 04547(PKC), 2004 U.S. Dist. LEXIS 13230, at \*2-3, 2004 WL 1586466, at \*1 (S.D.N.Y. July 14, 2004) (citations omitted) (emphasis in original). Defendant asserts that the reference should be withdrawn with respect to this adversary proceeding under the discretionary and the mandatory standards set forth in section 157(d).

B. This Court Should Not Withdraw The Reference As A Matter Of Discretion

Under the discretionary withdrawal standard, "for cause shown" a district court may withdraw the reference to a bankruptcy court. "Although section 157(d) does not define cause, the Second Circuit has identified a number of relevant factors, including 'whether the claim or proceeding is core or non-core, whether it is legal or equitable, and considerations of efficiency, prevention of forum shopping, and uniformity in the administration of bankruptcy law.'" In re Best Payphones, Inc., 370 B.R. 532, 536 (S.D.N.Y. 2007) (quoting Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1101 (2d Cir. 1993)). The proponent of a motion to withdraw the reference bears the burden of showing requisite cause for the relief requested. See, e.g., LTV Steel Co. v. Pennsylvania (In re Chateaugay Corp.), No. 90 Civ. 7713, 1992 U.S. Dist. LEXIS 15245, at \*13 (S.D.N.Y. Oct. 7,

1992) (citing In re Pruitt, 910 F.2d 1160, 1168 (3d Cir. 1990)). Here, Defendant has not met its burden.

1. The Adversary Proceeding Is A Core Matter

The "first task" for a court presented with a motion for discretionary withdrawal of the reference "is to decide whether the [proceeding] is core or non-core, since this determination will significantly affect questions of economy [and] uniformity." Shugrue v. Blackwall Green Ltd. (In re Ionosphere Clubs, Inc.), No. 93 Civ. 1260 (CSH), 1994 U.S. Dist. LEXIS 4676, at \*5 (S.D.N.Y. Apr. 14, 1994) (citing Orion Pictures Corp., 4 F.3d at 1101). Notwithstanding Defendant's assertions to the contrary, the adversary proceeding is plainly a core matter because it arises under the Bankruptcy Code.

Indeed, a statutory predicate for the adversary proceeding is section 505 of the Bankruptcy Code. (See Compl. ¶ 1.) Section 505 grants bankruptcy courts "broad authority to review any kind of tax attributable to the estate, both federal and state." D'Alessio v. IRS (In re D'Alessio), 181 B.R. 756, 759 (Bankr. S.D.N.Y. 1995). This section provides in relevant part that, subject to certain narrow exceptions not applicable here, a bankruptcy court "may determine the amount or legality of any tax, . . . whether or not previously assessed [and] whether or not paid." 11 U.S.C. § 505(a).

A debtor which commences a proceeding under section 505 invokes a "substantive right" that "arises under" title 11, consistent with case law interpretations of 28 U.S.C. §§ 157(b) and 1334(b). See, e.g., In re UAL Corp., 336 B.R. 370, 371 (Bankr. N.D. Ill. 2006) ("The determination of tax liability provided for by § 505(a) 'arises under' the Bankruptcy Code."). As a result, the vast majority of courts to have addressed the question (including courts in this district) have determined that actions under section 505 (whether brought by motion or by

commencement of a separate adversary proceeding) constitute core matters under 28 U.S.C.

§§ 157(b) and 1334(b) because they "arise under title 11."<sup>1</sup>

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<sup>1</sup> Courts that have come to this conclusion include the Courts of Appeal in the Third and Fourth Circuits and lower courts in the Second, Fifth, Sixth, Seventh, Eighth, and Tenth Circuits. See, e.g.:

Second Circuit: In re WorldCom, Inc., 371 B.R. 19, 22 (Bankr. S.D.N.Y. 2007) (court had core jurisdiction over debtor's motion for determination of refund rights); In re Waters, No. 99-31833, 2008 Bankr. LEXIS 374, at \*2 (Bankr. D. Conn. Feb. 8, 2008) (contested matter commenced by United States under section 505(a)(1) and Fed. R. Bankr. P. 9014 was core proceeding);

Third Circuit: In re Venture Stores, Inc., 54 F. App'x 721, 722 (3d Cir. 2002) (district court sitting in bankruptcy had jurisdiction over section 505 dispute under 28 U.S.C. § 157(b) "because this was a core proceeding arising under the Bankruptcy Code"); ANC Rental Corp. v. Dallas County (In re ANC Rental Corp.), 316 B.R. 153, 157 (Bankr. D. Del. 2004) (section 505 proceeding was core matter "because it invokes a right given to the Debtor under title 11");

Fourth Circuit: United States v. Wilson, 974 F.2d 514, 517 (4th Cir. 1992) (debtor's challenge under section 505 to chapter 7 trustee's settlement of tax dispute with United States was core matter "[u]nder 28 U.S.C. § 157(b), and more specifically under 11 U.S.C. § 505(a)(1)");

Fifth Circuit: Cluck v. United States (In re Cluck), 165 B.R. 1005, 1009 (W.D. Tex. 1993) (bankruptcy court properly denied debtor's request for proposed findings of facts and conclusions of law and entered final order in estate tax dispute under section 505 because matter was core proceeding (as both litigants appear to have conceded)), aff'd mem., 20 F.3d 1170 (5th Cir. 1994);

Sixth Circuit: United States v. Gordon Sel-Way, Inc. (In re Gordon Sel-Way, Inc.), 239 B.R. 741, 747 (E.D. Mich. 1999) (debtor's federal employment tax refund claim was core matter), aff'd, 270 F.3d 280 (6th Cir. 2001); French v. United States (In re French), 242 B.R. 369, 374 (Bankr. N.D. Ohio 1999) ("A determination of a debtor's tax liability under 11 U.S.C. § 505(a) involves a right afforded to a debtor by virtue of the Bankruptcy Code, and is therefore a core proceeding pursuant to 28 U.S.C. § 157(b)(2).");

Seventh Circuit: Cont'l Eng'g & Consultants, Inc. v. Lake County Assessor (In re Cont'l Eng'g & Consultants, Inc.), No. 03-62669, Adv. No. 04-6068, 2005 Bankr. LEXIS 1794, at \*17 (Bankr. N.D. Ind. Apr. 21, 2005) ("as has been routinely determined, proceedings under § 505(a)(1) do in fact constitute core proceedings"); United States v. Walters (In re Walters), 176 B.R. 835, 867 (Bankr. N.D. Ind. 1994) ("Section 505 involves a substantive right provided by title 11, and it is a proceeding that, by its nature, could only arise in the context of a bankruptcy case, and thus this proceeding is a core proceeding.") (citations omitted);

Eighth Circuit: Erickson v. Commissioner (In re Erickson), 172 B.R. 900, 905-08 (Bankr. D. Minn. 1994) (dispute under section 505 over debtor's tax liability (including that related to employment taxes) was core matter);

Tenth Circuit: Chance Rides, Inc. v. New Jersey (In re Chance Rides, Inc.), No. 01-12000, Adv. No. 015123, 2001 WL 34656216, 2001 Bankr. LEXIS 2168, at \*13 (Bankr. D. Kan. Dec. 5, 2001) ("Because § 505(a) specifically provides bankruptcy courts with jurisdiction to hear tax liability matters, most courts have held that a § 505(a) proceeding 'arises under' the Bankruptcy Code and is a 'core proceeding.'"); Grynberg v. United States (In re Grynberg), Ch. 11 Case No. 81 B 00821 C, Adv. No. 89 C 1371, 1991 Bankr. LEXIS 783, at \*19 (Bankr. D. Colo. May 28, 1991) ("Section 505 of the Bankruptcy Court provides this Court with the authority to adjudicate [debtors'] pre-petition gift tax liability as a core matter.");

(cont'd)

Defendant's only support for its contention that this adversary proceeding is a non-core matter consists of a Ninth Circuit opinion concerning a chapter 7 proceeding in which an individual debtor (appearing pro se) sought to pursue tax claims the chapter 7 trustee had abandoned as worthless, for his own benefit rather than for the benefit of the estate. (See Defendant's Mem. at 31 (citing Dunmore v. United States, 358 F.3d 1107 (9th Cir. 2004)). Even assuming that the Ninth Circuit is correct that a debtor's non-estate refund claim under section 505 is non-core, the Dunmore decision is distinguishable because it did not involve the determination of the chapter 7 estate's rights under sections 505 or 542(b)<sup>2</sup> or the allowance or disallowance of claims against the estate, which would have been core proceedings. Here, Plaintiffs seek refunds under section 505 and section 542(b) in their capacity as representatives of their respective chapter 11 estates as debtors-in-possession, which under sections 323<sup>3</sup> and 1107(a)<sup>4</sup> have the powers of a chapter 11 trustee to sue and invoke section 505 jurisdiction to determine the estates' rights to a refund and to enforce payment under 542(b).

In addition, Defendant has filed various proofs of claim, some which assert setoff rights (including the right to offset FICA penalties against the Plaintiffs' claims), and Plaintiffs

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Eleventh Circuit: Holywell Corp. v. Bank of New York (In re Holywell Corp.), 177 B.R. 991, 998-99 (S.D. Fla. 1995) (bankruptcy court had core jurisdiction over disputes over federal tax settlement under section 505(a) and 11 U.S.C. § 157(b)(2)(A) and (O); United States filed amicus brief in support of bankruptcy court ruling); Hospitality Ventures/La Vista v. Heartwood 11, L.L.C. (In re Hospitality Ventures/La Vista), 314 B.R. 843, 847 (Bankr. N.D. Ga. 2004) ("The Court has jurisdiction under 28 U.S.C. § 1334(b) over Debtor's complaint for § 505(a) relief as a core proceeding under 28 U.S.C. § 157(b).").

<sup>2</sup> Section 542(b) provides that "an entity that owes a debt that is property of the estate and that is matured . . . shall pay such debt to . . . the trustee." 11 U.S.C. § 542(b).

<sup>3</sup> Section 323 provides: "(a) The trustee in a case under this title is the representative of the estate. [¶] (b) The trustee in a case under this title has capacity to sue and be sued." 11 U.S.C. § 323.

<sup>4</sup> Section 1107(a) provides: "Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties . . . of a trustee serving in a case under this chapter." 11 U.S.C. § 1107(a).

have objected to those claims and have similarly preserved their rights to offset estate claims, including the refund claims, against the claims of the United States. (Gershbein Decl. ¶ 3, Exs. 1-12.) Under 28 U.S.C. § 157(b)(2)(C), "where a creditor of the estate files a proof of claim and the estate counterclaims against him, or where the estate brings an action against a creditor and the creditor counterclaims asserting a set-off, it is entirely appropriate for the action to be classified as a core proceeding." Statutory Comm. of Unsecured Creditors v. Motorola, Inc. (In re Iridium Operating LLC), 285 B.R. 822, 831 (S.D.N.Y. 2002). Moreover, "claims in an adversary proceeding are tantamount to counterclaims against a creditor who filed a claim against the estate under § 157(b)(2)(C)." Id.

Furthermore, even though Defendant's setoff claims were filed by multiple agencies and departments of the United States, Defendant has a unitary right to setoff. See In re Whimsy, Inc., 221 B.R. 69, 72 (S.D.N.Y. 1998) (agencies, departments, and subdivisions of United States constitute single, unitary creditor for purposes of setoff in bankruptcy); HAL, Inc. v. United States (In re HAL, Inc.), 122 F.3d 851, 852-54 (9th Cir. 1997); Turner v. Small Bus. Admin. (In re Turner), 84 F.3d 1294, 1299 (10th Cir. 1996) (en banc). Because Plaintiffs' FICA refund claims are tantamount to counterclaims against Defendant who filed multiple proofs of claim (or Defendant's multiple claims asserting setoff,<sup>5</sup> regardless of which federal agency has

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<sup>5</sup> Although Defendant notes in its Memorandum that it has not formally asserted setoff rights in its answer to the Complaint (Def.'s Mem. At 31, n. 11), the fact remains that Defendant has asserted setoff rights in various of its proofs of claim (see Gershbein Decl. ¶ 3, Exs. 1, 5-11 (setoff expressly preserved at pp. 6, 36, 40-41, 44-45, 47-48, 50-51, 53-54, 57-58)) and has not otherwise waived any setoff rights, which prepetition setoff rights are generally preserved under section 553(a) of the Bankruptcy Code and which under section 506(a) of the Bankruptcy Code would secure Defendant's claims against the estates. Thus, the Bankruptcy Court's adjudication of the adversary proceeding will determine whether each side can exercise its setoff rights against the other (assuming that any of Defendant's proofs of claim are ultimately allowed by the Bankruptcy Court) and whether any of Defendant's claims constitute secured claims under the Bankruptcy Code. The adversary proceeding in this respect is core to the process of allowing and disallowing claims against the Delphi estates, to a determination of whether Defendant's claims are secured, and to the adjustment of the debtor-creditor relationship. See 28 U.S.C. § 57(b)(2)(B), (O); N. Am. Energy Conversation, Inc. v. Interstate Energy Res., Inc. (cont'd)

asserted them, constitute counterclaims<sup>6</sup> to the estates' refund adversary proceeding), the adversary proceeding is a core matter under 28 U.S.C. § 157(b)(2)(C).

No court in this circuit appears to have relied on Dunmore in considering jurisdictional issues remotely comparable to those presented here, and the decision is rarely cited in published opinions by courts outside the Ninth Circuit. The reluctance of courts from other jurisdictions to rely on Dunmore in this context may result from the Ninth Circuit's interpretation of "core" in 28 U.S.C. § 1334(b), which is considerably more constrained than that adopted by most other circuits, including the Second Circuit. In the Second Circuit, the term 'core proceeding' is "given a broad interpretation that is close to or congruent with constitutional limits as set forth in Marathon, and that Marathon is to be construed narrowly." United States Lines, Inc. v. Am. Steamship Owners Mut. Prot. & Indem. Ass'n (In re United States Lines, Inc.), 197 F.3d 631, 637 (2d Cir. 1999); Ben Cooper, Inc. v. Ins. Co. of Pa. (In re Ben Cooper, Inc.), 896 F.2d 1394, 1398-99 (2d Cir.), vacated, 498 U.S. 964 (1990), opinion reinstated, 924 F.2d 36 (2d Cir. 1991). By contrast, "the Ninth Circuit has adopted a relatively narrow interpretation,"

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(In re N. Am. Energy Conservation, Inc.), No. 00-40563 (PCB), 00-2276, 00CIV4302(SHS), 2000 WL 1614614, at \*2 (S.D.N.Y. Oct. 12, 2000) (adversary proceeding on estate's prepetition contract is core because defendant's setoff claim against estate "elevates an unsecured claim to secured status").

<sup>6</sup> Some case law concludes that an estate's core counterclaim referred to in section 157(b)(2)(C) must be compulsory (i.e., arise out of the same transaction or occurrence), as opposed to merely permissive (i.e., unrelated), with respect to the creditor's proof of claim. See, e.g., Iridium Operating LLC, 285 B.R. at 832. The statute, however, does not make such a distinction. Cf. Fed. R. Civ. P. 13(b) (defining permissive counterclaim as any claim unrelated to primary claim). Nor do the cases limiting core matters to compulsory counterclaims explain why an estate's permissive counterclaim implicates the constitutional right to an Article III judge at issue in Marathon. These cases provide no rationale for why a creditor who has invoked bankruptcy court jurisdiction, by filing a proof of claim so as to share in the distribution of estate assets, retains the constitutional right to have an Article III judge adjudicate one of the estate's assets, i.e., the estate's permissive counterclaim. In any event, Defendant has expressly asserted setoff rights with respect to FICA penalties for tax year 2005 (and section 553(a) of the Bankruptcy Code generally preserves all prepetition setoff rights, whether asserted in a proof of claim or not). The 2005 FICA penalties on their face would appear sufficiently related to the Plaintiffs' FICA refund claims for tax years 1999 and 2003 so that the refund adversary falls within the definition of a core matter under section 157(b)(2)(C). Moreover, Defendant's rights to contest the estates' FICA refund claims are public rights, which as discussed below do not give rise to the constitutional issues present in Marathon.

holding that "core proceeding administrative matters that only arise in bankruptcy and would have no existence outside of bankruptcy." In re COM 21, No. C-04-03396 RMW, 2005 WL 1606357, at \*4-5, 2005 U.S. Dist. LEXIS 34339, at \*13, \*15 (N.D. Cal. July 6, 2005). In any case, the Ninth Circuit's limited reading of "core" does not apply in the Second Circuit, and Dunmore has no bearing on this adversary proceeding.

Finally, Plaintiffs' FICA refund claim simply is not comparable to the proceeding at issue in Marathon that led to the enactment of 28 U.S.C. § 157. In Marathon, because the dispute involved two private parties (a chapter 11 debtor and a non-debtor contract counterparty), the Supreme Court held that it fell within the sole authority of courts established under Article III of the United States Constitution. The adjudication of "public rights," on the other hand, is not subject to this limitation. "[A] matter of public rights must at a minimum arise between the government and others. In contrast, the liability of one individual to another . . . is a matter of private rights. Our . . . controversies in the former category may be removed from Art. III courts to legislative courts [which include bankruptcy courts and] administrative agencies for their determination." Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 69-70 (1982) (internal quotations and citations omitted). The Second Circuit has defined "public rights" as "rights which arise between governmental agencies and the citizens subject to the authority of these bodies." Kramer v. Comm'r, 930 F.2d 975, 988 (2d Cir. 1991). By definition, public rights encompass rights arising between a taxing authority and a taxpayer. "The relationship between the government and taxpayer plainly gives rise to public rights and we have no doubt that the resolution of such disputes can be relegated to a non-Article III forum." Id. at 992.



The refund adversary proceeding falls squarely within the following statutory definitions of core matters at 28 U.S.C. § 157(b)(2): subpart (A) ("matters concerning the administration of the estate"); subpart (B) ("allowance or disallowance of claims against the estate"); subpart (C) ("counterclaims by the estate against persons filing claims against the estate"); subpart (E) ("orders to turn over property of the estate"); and subpart (O) ("other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor . . . relationship"). The section 157(b)(2) categories, however, are broad enough to capture the type of lawsuits which Marathon holds must be deemed non-core (i.e., subject to a final decision only by an Article III judge). Courts, therefore, will find Marathon-type lawsuits to be non-core even though they otherwise fall within the literal terms of section 157(b)(2), especially subpart (A)'s "matters concerning the administration of the estate" and subpart (O)'s "other proceedings." See, e.g., Orion Pictures Corp., 4 F.3d at 1102 (estate's prepetition contract actions are not core matters, notwithstanding they would inure to benefit of estate and thus concern estate's administration under section 157(b)(2)(A)). As noted above, however, the Plaintiffs' public rights adversary proceeding against the government is not a private rights proceeding that must be deemed non-core in accordance with Marathon. See Luan Inv. S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.), 304 F.3d 233, 229 (2d Cir. 2002) ("we construe Marathon narrowly and give core proceedings 'a broad interpretation that is "close to or congruent with constitutional limits"").

For the foregoing reasons, the adversary proceeding falls squarely within the Bankruptcy Court's core jurisdiction.

2. Defendant Has Not Met Its Burden With Respect To The Existence  
Of Other Permissive Withdrawal Factors

Having failed even to acknowledge that it bears the burden of establishing the existence of cause for discretionary withdrawal, it is perhaps not surprising that Defendant has failed to meet its burden. Three of Defendant's arguments in support of discretionary withdrawal rely expressly on the mistaken assertion that this adversary proceeding is not a core matter. (See Def.'s Mem. at 31, 33, 34.) Absent the jurisdictional foundation asserted, Defendant's arguments concerning judicial economy, cost and delay, and forum shopping simply fall away. And because the Bankruptcy Court plainly has the authority to issue a final ruling in the adversary proceeding, all of these factors weigh against discretionary withdrawal.

Defendant's only remaining point in support of discretionary withdrawal appears to be that the dollar amount at issue in this adversary proceeding is insufficient to affect "meaningfully" the administration of the Debtors' estates. (Def.'s Mem. at 34.) Defendant cites no authority purporting to establish a minimum threshold of the amount in dispute for a controversy to be deemed to have a meaningful effect on a debtor's estate. Plaintiffs are aware of no such authority. Even if the amount in dispute were relevant in determining whether to grant Defendant's request for relief, the value of Plaintiffs' claims is hardly negligible by any standards.

Plaintiffs' claims against Defendant and any proceeds thereof indisputably constitute property of the Debtors' estates under 11 U.S.C. § 541, the disposition of which falls squarely within a bankruptcy court's jurisdictional purview. Indeed, core matters include all matters concerning the administration of the estate. See 28 U.S.C. § 157(b)(2)(A). Courts routinely have recognized the resolution of tax disputes as core proceedings concerning the administration of a debtor's estate or the liquidation of assets therein under section 157(b)(2)(A) and (O). See, e.g., Holywell Corp. v. Bank of New York (In re Holywell Corp.), 177 B.R. 991,

998-99 (S.D. Fla. 1995); United States v. Walters (In re Walters), 176 B.R. 835, 867 (Bankr. N.D. Ind. 1994); Cluck, 165 B.R. at 1009.

In sum, because the adversary proceeding is a core matter, and because Defendant has failed to meet its burden to show requisite cause under applicable law, this Court has solid grounds for denying the request to withdraw the reference as a matter of discretion.

C. The Adversary Proceeding Is Not Subject To Mandatory Withdrawal

Section 157(d) of title 28 of the United States Code provides that a district court "shall" withdraw the reference concerning a proceeding that "requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." 28 U.S.C. § 157(d). As with discretionary withdrawal, the movant bears the burden of establishing that mandatory withdrawal is warranted. In re US Airways Group, Inc., 296 B.R. 673, 677 (E.D. Va. 2003) ("[T]he burden of demonstrating both mandatory and discretionary withdrawal is on the movant.") (citations omitted).

Although the term "consideration" is not defined, courts in this circuit have stressed that section 157(d) should "not become an 'escape hatch' for matters properly before [the bankruptcy] court." Oneida Ltd. v. Pension Benefit Guar. Corp., 372 B.R. 107, 110 (S.D.N.Y. 2007) (quoting United States v. Johns-Manville Corp. (In re Johns-Manville Corp.), 63 B.R. 600, 603 (S.D.N.Y. 1986)). "The Second Circuit Court of Appeals construes this provision 'narrowly,' requiring withdrawal of the reference only if 'substantial and material consideration of non-Bankruptcy Code federal [law] is necessary for the resolution of the proceeding.'" Enron Corp. v. J.P. Morgan Secs., Inc. (In re Enron Corp.), Ch. 11 Case No. 01-16034, Adv. No. 03-92677, 07 Civ. 10527 (SAS), 2008 WL 649770, at \*4, 2008 U.S. Dist. LEXIS 18173, at \*13 (S.D.N.Y. Mar. 10, 2008) (quoting Shurgrue v. Air Line Pilots Ass'n, Int'l (In re Ionosphere Clubs, Inc.), 922 F.2d 984, 995 (2d Cir. 1990)).

The phrase "substantial and material consideration" is understood to mean "significant interpretation of federal laws that [C]ongress would have intended to have decided by a district judge rather than a bankruptcy judge." Enron Corp., 2008 U.S. Dist. LEXIS 18173, at \*13-14 (quoting In re Texaco, Inc., 84 B.R. 911, 921 (S.D.N.Y. 1988) (in turn quoting United States v. Johns-Manville Corp. (In re Johns-Manville Corp.), 63 B.R. 600, 602 (S.D.N.Y. 1986))). Mandatory withdrawal applies only "where 'issues arising under non-title 11 laws dominated those arising under title 11,'" Enron Corp., 2008 U.S. Dist. LEXIS 18173, at \*14 (quoting In re Texaco, Inc., 84 B.R. at 921 (in turn quoting Johns-Manville Corp., 63 B.R. at 602)), or where the substantial and material consideration of non-bankruptcy federal law "is necessary for the resolution of a case or proceeding." Frito-Lay, Inc. v. Chateaugay Corp. (In re Chateaugay Corp.), 99 B.R. 206, 208 (S.D.N.Y. 1989) (citations omitted). "[T]he mandatory withdrawal standard is more easily satisfied when complicated issues of first impression are implicated under non-bankruptcy federal laws." Keene Corp. v. Williams Bailey & Wesner, LLP (In re Keene Corp.), 182 B.R. 379, 382 (S.D.N.Y. 1995). "[W]ithdrawal is not mandatory where a case requires the 'straightforward application of a federal statute to a particular set of facts.'" Oneida Ltd. v. Pension Benefit Guar. Corp., 372 B.R. at 110 (quoting In re Johns-Manville Corp., 63 B.R. at 602).

Defendant portrays this adversary proceeding as ground-breaking litigation that will give rise to multiple issues of first impression and require "substantial interpretation" of the federal tax laws.<sup>7</sup> In fact, however, Defendant's discussion of the tax law authorities is

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<sup>7</sup> Defendant effectively asks this Court to assume that the sections of the Internal Revenue Code that are relevant to the adversary proceeding (26 U.S.C. §§ 3121(a) and (b) and 7805(b)(8)) constitute "other laws of the United States regulating organizations or activities affecting interstate commerce" for purposes of 28 U.S.C. § 157(d). (Def.'s Mem. at 12-13.) Such an assumption would be improper.

(cont'd)

egregiously incomplete and gives the erroneous impression that the relevant law is highly unsettled and unusually complex. On the contrary, as discussed below, this adversary proceeding raises no issues of first impression and will require only a straightforward application of existing law. Moreover, the legal issues in the adversary proceeding are considerably simpler than those in other tax matters routinely adjudicated by bankruptcy courts.

1. Whether FICA Taxation Applies To Payments Made On Signing Or Cancellation Of An Employment Contract Is Not A Question Of First Impression

FICA taxes apply to "all remuneration for employment." 26 U.S.C. § 3121(a).

"Employment" is defined to include "any service . . . performed . . . by an employee for the person employing him." 26 U.S.C. § 3121(b). The term "wages" was similarly described in the Congressional committee reports accompanying enactment of the statute. See H.R. Rep. No. 74-615, at 32-33 (1935); S. Rep. No. 74-628, at 44-45 (1935). When an employer makes a payment to an employee as compensation for something other than services, that payment, by the terms of the statute, is not subject to FICA taxes. Defendant glosses over this critical statutory exemption

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*(cont'd from previous page)*

Strictly speaking, these Internal Revenue Code provisions do not "regulate" conduct. They simply impose particular tax consequences and resulting tax liability for activities and operations freely undertaken by taxpayers; the statutes do not regulate the activities themselves. By contrast, other provisions of the Internal Revenue Code (such as those concerning eligibility for tax exempt status under 26 U.S.C. § 502(c)(3)) do in fact regulate conduct in a manner comparable to other federal statutes that regulate organizations and activities for purposes of 28 U.S.C. § 157(d), such as the federal civil rights, environmental protection, and labor laws. Those sections of the Internal Revenue Code, however, are not at issue in the adversary proceeding.

In *IRS v. CM Holdings, Inc.* (In re CM Holdings, Inc.), 221 B.R. 715 (D. Del. 1998), the only authority cited by Defendant in support of the proposition that the tax laws at issue here regulate organizations or activities affecting interstate commerce, the court concluded, with no reference to either statutory or common law authority, that "[i]t cannot be gainsaid that the federal Tax Code must be consulted in order to determine the validity of the IRS' claims and federal tax law regulates organizations or activities affecting interstate commerce, as required under 28 U.S.C. § 157(d).". Id. at 721. This decision shed no light on whether statutory authority to assess tax liability constitutes regulation for purposes of section 157(d). The legislative history of section 157(d) appears to provide no pertinent guidance.

As a consequence, Defendant has failed to meet its burden that mandatory withdrawal of the reference applies to a dispute implicating 26 U.S.C. §§ 3121(a) and (b) and 7805(b)(8).

in its attempt to assert that this matter should simply be resolved under a 2004 revenue ruling (apparently to be applied without regard to the statute or the case law). (See Def.'s Mem. at 14.)

Whether compensation constitutes wages for FICA purposes has been litigated with considerable frequency, and courts in dozens of cases have rejected the government's assertions that all payments by employers to employees are subject to payroll taxes. In Central Illinois Public Service Co. v. United States, 435 U.S. 21 (1978), a case not cited in Defendant's Memorandum, the Supreme Court held that employee lunch allowances were not wages subject to payroll taxes and categorically rejected the government's persistent contention that all reimbursements in an employer-employee relationship are subject to withholding.

Other cases both before and after Central Illinois have similarly held that where payments are made by an employer to an employee for something other than services, those payments are simply not subject to employment taxes (including, specifically, FICA taxes). For example, Central Illinois cited as authority both Humble Oil Refining Co. v. United States, 442 F.2d 1362 (Ct. Cl. 1971), and Humble Pipe Line Co. v. United States, 442 F.2d 1353 (Ct. Cl. 1971). In the Humble cases, the Federal Court of Claims held that, where the employer required an employee to change job locations, the employer's reimbursement of the employee's moving expenses did not constitute wages. The Humble Oil court acknowledged that the moving expense reimbursements were income to the employee but held the reimbursements were not wages because they were not meant by the employer to be paid "for services performed." See also Allstate Ins. Co. v. United States, 530 F.2d 378 (Ct. Cl. 1976) (also concluding that moving expenses were not wages); Rowan Cos. v. United States, 452 U.S. 247 (1981) (meals and lodging provided to offshore oil rig workers were not wages for FICA and Federal Unemployment Tax Act purposes); Stubbs, Overbeck & Assocs. v. United States, 445 F.2d 1142

(5th Cir. 1971) (per diem living allowances paid to employees sent to remote temporary work locations were not wages); Royster Co. v. United States, 479 F.2d 387 (4th Cir. 1973) (meal reimbursements paid on day trips were not wages because not paid as remuneration for services, i.e., paid for employer's own business purposes and regardless of performance of employee); People's Life Ins. Co. v. United States, 373 F.2d 924 (Ct. Cl. 1967) (amounts paid to send employees to convention were not wages, but legitimate expenses of employer). This principle of Central Illinois has also been followed in North Dakota State University v. United States, 255 F.3d 599, 603 (8th Cir. 2001), addressing the wage characterization of payments made to tenured faculty in exchange for relinquishment of their tenure rights.

Even the revenue rulings directly at issue here have been the subject of several court decisions. In November 2004, the IRS released Revenue Ruling 2004-109 (concerning FICA taxation of payments to sign employment contracts) simultaneously with another revenue ruling (Rev. Rul. 2004-110, 2004-2 C.B. 960, addressing the FICA taxation of payments for breach of employment contracts). The government formally acknowledged the correlation between these two revenue rulings at the time of their release. See News Release, Dep't Of Treasury, Treasury And IRS Clarify Employment Tax Treatment Of Payments Made On The Signing Or Cancellation Of An Employment Contract (Nov. 23, 2004), available at Treas. JS-2114, 2004 WL 2669356 (Dep't Treas.). Indeed, Defendant acknowledges that Revenue Ruling. 2004-110 is "consistent with the IRS's view that 'wages' for FICA purposes encompasses any [payments by an employer to an employee]." (See Def.'s Mem. at 18.)

In straining to characterize as a case of "first impression" any matter dealing with the FICA taxation of signing bonuses, Defendant neglects to make it sufficiently clear in its Memorandum that Revenue Ruling 2004-110 (which was paired upon its issuance with Revenue

Ruling 2004-109) has already been the subject of several court decisions. See, e.g., Appoloni v. United States, 450 F.3d 185 (6th Cir. 2006); Univ. of Pittsburgh v. United States, 507 F.3d 165 (3d Cir. 2007). If a ruling closely related to the issues addressed in Revenue Ruling 2004-109 has already been addressed by several courts, Plaintiffs' refund claim can hardly be said to be a matter of first impression.

2. The Standard Applicable To Retroactive Revenue Rulings Is Settled Law

Defendant makes much of the jurisprudence concerning the deference due to revenue rulings in the abstract. (See Def.'s Mem. at 21-25.) More to the point, however, Defendant devotes comparatively little attention to the standard that courts apply when examining whether a revenue ruling should be applied retroactively during pending litigation, a standard that is routinely applied and hardly controversial.

Internal Revenue Code section 7805(b)(8) provides that "[t]he Secretary may prescribe the extent, if any, to which any ruling . . . relating to the internal revenue laws shall be applied without retroactive effect." 26 U.S.C. § 7805(b)(8). That authority, however, is reviewable for abuse of discretion. See, e.g., Gehl Co. v. Comm'r, 795 F.2d 1324, 1332 (7th Cir. 1986); Becker v. Comm'r, 85 T.C. 291, 294 (1985); Prabel v. Comm'r, 91 T.C. 1101, 1112 (1988), aff'd, 882 F.2d 820 (3d Cir. 1989); Burleson v. Comm'r, 68 T.C.M. (CCH) 288, T.C. Mem. 1994-364, 1994 WL 395021 (1994). As a matter of official policy, the revocation or modification of prior rulings are not applied retroactively to the extent that the new rulings have adverse tax consequences for taxpayers. Rev. Proc. 89-14, 1989-1 C.B. 814 at §§ 7.01(4)-(5). Abuse of the IRS's discretion to issue retroactive rulings may also be found where the retroactive withdrawal or modification of a prior revenue ruling creates a distinction between taxpayers that has no rational basis. See, e.g., Fogarty v. United States, 780 F.2d 1005 (Fed. Cir. 1986); Baker v. United States, 748 F.2d 1465 (11th Cir. 1984), acq., 1995-2 C.B. 1; Prabel, 91 T.C. at 1112.



More importantly, "[a] revenue ruling issued at a time when the IRS is preparing to litigate is often self-serving and not generally entitled to deference by the courts." AMP, Inc. v. United States, 185 F.3d 1333, 1338-39 (Fed. Cir. 1999); see also Fribourg Navigation Co. v. Comm'r, 383 U.S. 272 (1966) (rejecting revenue ruling issued on eve of trial); Gen. Dynamics Corp. v. Comm'r, 108 T.C. 107, 120 (1997) ("revenue rulings are generally not afforded any more weight than . . . a position on brief . . . especially [when] not publish[ed] . . . prior to this controversy"); Tandy Corp. v. Comm'r, 92 T.C. 1165, 1170 (1989) ("We were well aware of respondent's position on this issue before the issuance of [the ruling at issue]; we think that the ruling is a thinly veiled attempt to influence this litigation, judging from the similarity of the facts and the timing of its issuance. This and other courts have routinely looked upon such bootstrapping revenue rulings with disfavor.") (citing Ludwig v. Comm'r, 68 T.C. 979, 986 n.4 (1977)).<sup>8</sup>

The 2004 revenue ruling at issue in this adversary proceeding was issued some eighteen months after the filing of the 1999 Refund Claims and after the IRS became aware of the refund claims filed by numerous other taxpayers in reliance on Revenue Ruling 58-145. A court examining whether the 2004 revenue ruling should govern retroactively will apply the abuse of discretion standard described above. This standard is routinely applied in many areas of the law, and the Bankruptcy Court is certainly no stranger to it.

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<sup>8</sup> In contrast, courts have given particular deference to long-standing revenue rulings and administrative guidance issued contemporaneously with the adoption of a statute or regulation. The Supreme Court has observed as a well-settled principle that "Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law." Cleveland Indians Baseball Co. v. United States, 532 U.S. 200, 219-20 (2001) (quoting Cottage Savs. Assn. v. Comm'r, 499 U.S. 554, 561 (1991)). Thus, the deference accorded to Revenue Ruling 58-145 would be greater than that accorded Revenue Ruling 2004-109 and would support not permitting the government to retroactively revoke the prior ruling. Here again, the proper amount of deference is certainly not a matter of "first impression" that could only be decided by a district court.

3. The Adversary Proceeding Requires Only Straightforward Application Of  
Non-Bankruptcy Law

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The legal questions in the adversary proceeding bear little resemblance to the skein of issues arising under non-bankruptcy law suggested in Defendant's Memorandum. The dispute here concerns whether or not certain identified payments are wages and whether the IRS abused its discretion in applying a new revenue ruling retroactively. Therefore, the adjudication of the dispute will require the straightforward application of 26 U.S.C. §§ 3121(a) and (b) and 7805(b)(8) which does not require mandatory withdrawal of the reference under 28 U.S.C. § 157(d).

Bankruptcy courts routinely apply federal tax law in contested matters and adversary proceedings that call for far more substantial and material interpretation of the Internal Revenue Code than this adversary proceeding would require. For example, numerous bankruptcy courts have adjudicated disputes over whether debtors should be considered responsible parties for FICA purposes under 26 U.S.C. § 6672. See, e.g., Shepard v. United States (In re Shepard), 253 B.R. 397 (Bankr. D.S.C. 2000); Klippel v. IRS (In re Klippel), No. 98-23315, 1999 Bankr. LEXIS 1598 (Bankr. D.N.J. Nov. 18, 1999); Erickson v. Comm'r (In re Erickson), 172 B.R. 900 (Bankr. D. Minn. 1994); Associated Bicycle Serv., Inc. v. United States (In re Associated Bicycle Serv., Inc.), 128 B.R. 436 (Bankr. N.D. Ind. 1990); Grant v. United States (In re Grant), No. 89-02131, 1990 Bankr. LEXIS 1993 (Bankr. W.D. Pa. 1990 Sept. 11, 1990); In re Turchon, 62 B.R. 461 (Bankr. S.D.N.Y. 1986). In addition, many bankruptcy courts have adjudicated disputes arising in other areas of federal tax law as well. See, e.g., WorldCom, 371 B.R. at 26 (determining federal telecommunications excise taxes); Oakridge Consulting, Inc. v. United States (In re Consolidated FGH Liquidating Trust), 325 B.R. 564 (Bankr. S.D. Miss. 2005) (construing Internal Revenue Code consolidation provisions); Kiesner v. IRS (In re

Kiesner), 194 B.R. 452 (Bankr. E.D. Wis. 1996) (construing Internal Revenue Code partnership tax provisions); Kreidle v. IRS (In re Kreidle), 146 B.R. 464 (Bankr. D. Colo. 1991) (construing Internal Revenue Code net operating loss provisions).

Defendant has offered no explanation for why this adversary proceeding should require "substantial and material interpretation" of non-bankruptcy law when bankruptcy courts regularly issue final rulings in disputes that give rise to issues of equal or greater complexity under the Internal Revenue Code. Because of the broad jurisdictional grant inherent in Bankruptcy Code section 505, bankruptcy courts hear and adjudicate, as a routine matter, a wide variety of disputes that implicate the federal tax laws. Were Defendant's interpretation of 28 U.S.C. § 157(d) taken to its logical extreme, bankruptcy courts would never have occasion to rule on federal tax disputes, notwithstanding Bankruptcy Code section 505. Such a conclusion certainly would be at odds with Marathon and the legislative intent behind 28 U.S.C. § 157(d).

In light of the foregoing, Defendant has not, and cannot, carry its burden. Because of the nature of the dispute, this adversary proceeding calls for only a straightforward application of settled law.<sup>9</sup> As a consequence, mandatory withdrawal of the reference under 28 U.S.C. § 157(d) is not applicable here.

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<sup>9</sup> Defendant incorrectly asserts that "counsel for Delphi recognized years ago that the 1958 ruling [Revenue Ruling 58-145] was shaky precedent in the CBA ratification payment context, especially with respect to FICA taxes." (Def.'s Mem. at 28 (citing Mary B. Hevener & Anne G. Batter, When Are Payments From An Employer To An Employee Not "Wages" Subject To Employment Taxes, 95 J. Tax'n 349 (2001).) Although the cited article discusses uncertainty in various other contexts, nowhere does the article suggest that Revenue Ruling 58-145 was wrongly decided or inapplicable to collective bargaining agreements. To the contrary, the 2001 article explains that the IRS continued to adhere to Revenue Rule 58-145 in subsequent rulings and concludes that "consistent with Rev. Rul. 58-145, bonuses paid on ratification of a collective bargaining agreement should not be treated as wages. Further, in all events, a signing bonus should not be treated as wages as long as the bonus is not conditioned on the performance of services." Id. at 355-56.

CONCLUSION

The Court should deny Defendant's motion to withdraw the reference.

Dated: New York, New York  
June 9, 2008

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# **EXHIBIT E**

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Delphi Automotive Systems Services LLC, Respondents

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X	
In re	: 08 Civ. 04487 (PKC)
	: :
DELPHI CORPORATION, <u>et. al.</u> ,	: Bankr. Case No. 05-44481 (RDD)
	: :
Debtors.	: (Jointly Administered)
	: :
----- X	
DELPHI CORPORATION, DELPHI	: Adversary Proceeding
AUTOMOTIVE SYSTEMS LLC, AND	: No. 08-01038
DELPHI AUTOMOTIVE SYSTEMS	: :
SERVICES LLC,	: :
	: :
Plaintiffs,	: :
	: :
- against -	: :
	: :
UNITED STATES OF AMERICA,	: :
	: :
Defendant.	: :
----- X	

DECLARATION OF EVAN GERSHBEIN IN SUPPORT OF  
MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS' OPPOSITION TO  
GOVERNMENT'S MOTION TO WITHDRAW REFERENCE

I, Evan Gershbein, declare:

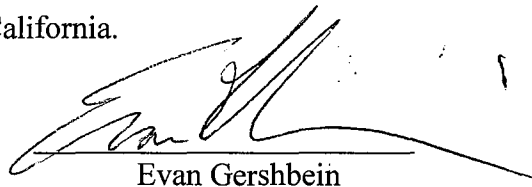
1. Respondents Delphi Corporation, Delphi Automotive Systems LLC, and Delphi Automotive Systems LLC ("Plaintiffs") and certain of their subsidiaries and affiliates are debtors and debtors-in-possession (the "Debtors" in chapter 11 cases (the "Chapter 11 Cases") under title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended as of October 8, 2005. I submit this declaration in support of the Memorandum Of Law In Support Of Objection To Government Motion To Withdraw Reference.

2. I am over eighteen years of age and not a party to the above-captioned civil proceeding. I am a Senior Consultant of Kurtzman Carson Consultants LLC ("KCC"), and my business address is 2335 Alaska Avenue, El Segundo, California 90245. The Debtors retained KCC as the claims agent in the Chapter 11 Cases pursuant to the Final Order Under 28 U.S.C. § 156(c) Authorizing Retention And Appointment Of Kurtzman Carson Consultants LLC As Claims, Noticing, And Balloting Agent for Clerk Of Bankruptcy Court, entered by the United States Bankruptcy Court for the Southern District of New York on December 1, 2005 (Chapter 11 Case Docket No. 1374). This declaration is based upon my personal knowledge, except as to such matters as are stated upon information and belief.

3. I certify that the following attached exhibits are true and correct copies of certain proofs of claims filed in the Chapter 11 Cases. For each attached exhibit, the following table indicates: the exhibit number, the claimant listed on the proof of claim, the Debtor against which the claim is filed, the proof of claim number, and the status of the proof of claim.

<b>Exhibit Number</b>	<b>Gov't Agency Claimant</b>	<b>Debtor</b>	<b>Claim Number</b>	<b>Status Of Claim</b>
1	DHHS	Delphi Automotive Systems, Inc. (predecessor to Delphi Corp.)	2578	Objection pending
2	EEOC	Delphi Corporation	14821	Expunged
3	EEOC	Delphi Corporation	16727	Expunged/Appealed
4	EEOC	Delphi Corporation	16747	Expunged
5	EPA	Delphi Automotive Systems LLC	14309	Claim filed
6	IRS	Delphi Automotive Systems Services LLC	7314	Expunged
7	IRS	Delphi Automotive Systems Services LLC	14154	Objection pending
8	IRS	Delphi Automotive Systems Services LLC	15822	Expunged
9	IRS	Delphi Corporation	7498	Expunged
10	IRS	Delphi Corporation	12127	Expunged
11	IRS	Delphi Corporation	14259	Expunged
12	SEC	Delphi Corporation	2445	Withdrawn

I declare under penalty of perjury that the foregoing is true and correct. Executed on  
June 9, 2008 in Los Angeles, California.



Evan Gershbein



**Exhibit 1**  
**Claim No. 2578**

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment



Attachment to Proof of Claim of the  
United States Department of Health and Human Services

**In Re Delphi Automotive Systems, Inc.**

Case No. 05-44596-rdd  
Chapter 11 (Voluntary, Asset)

United States Bankruptcy Court for the Southern District of New York (Manhattan)

1. Basis For Claim

Debts arising under the Medicare Program established under Title XVIII of the Social Security Act, 42 U.S.C. § 1395-1395ggg.

2. Date Debt Was Incurred

This claim reflects the estimated liability of the debtor to this agency of the United States for debts arising under the Medicare Program from 1/1/2001 to the petition date. Because the United States continues to search its data bases for further debts which arose under the provisions of the Medicare Secondary Payer Act, 42 U.S.C. § 1395y, subsequent debts for these and other years may be determined at a later date.

8. Credits and Setoffs

The United States reserves the right to amend this claim to assert subsequently discovered liabilities. The indemnification of any sums held subject to setoff is without prejudice to any other right under 11 U.S.C. § 553 to set off, against this claim, debts owed to the debtor by this or any other federal agency.

**Exhibit 2**  
**Claim No. 14821**

FORM B10 (Official Form 10) (04/05)

UNITED STATES BANKRUPTCY COURT <u>S.D.</u> DISTRICT OF <u>New York</u>		<b>PROOF OF CLAIM</b>
Name of Debtor <u>Delphi Corporation</u> Case Number <u>05-44481(RDD)</u>		Claim #14821 USBC SDNY Delphi Corporation, et al. 05-44481 (RDD)
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <u>U.S. Equal Employment Opportunity Commission</u>		
Name and address where notices should be sent: <u>Donna L. Williams-Alexander, Esq.</u> <u>AJC Federal Building, Suite 3001</u> <u>1240 East Ninth Street</u> <u>Cleveland, Ohio 44119</u> Telephone number: <u>216-522-7454</u>		<div style="border: 2px solid black; padding: 10px; margin: 0 auto; width: 150px;"> <b>RECEIVED</b>                       AUG 11 2006   <b>KURTZMAN CARSON</b> </div>
Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/>		
Check box if you have never received any notices from the bankruptcy court in this case. <input checked="" type="checkbox"/>		THIS SPACE IS FOR COURT USE ONLY
Check box if the address differs from the address on the envelope sent to you by the court. <input type="checkbox"/>		
Account or other number by which creditor identifies debtor:		Check here <input type="checkbox"/> replaces if this claim a previously filed claim, dated: _____ <input type="checkbox"/> amends
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods Sold / Services Performed <input type="checkbox"/> Customer Claim <input checked="" type="checkbox"/> <b>Date Stamped Copy Returned</b> <input type="checkbox"/> Taxes <input type="checkbox"/> Money Loaned <input type="checkbox"/> <b>No self addressed stamped envelope</b> <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> <b>No copy to return</b> <input type="checkbox"/> Other _____		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input checked="" type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
<b>2. Date debt was incurred:</b> <u>June 1, 2004</u>		<b>3. If court judgment, date obtained:</b>
<b>4. Total Amount of Claim at Time Case Filed: \$</b> _____ (unsecured) (secured) (priority) (Total) If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		<b>7. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ <u>300,000.00</u> Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000)* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)( ). <small>*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. \$10,000 and 180-day limits apply to cases filed on or after 4/20/05. Pub. L. 109-8.</small>
<b>6. Unsecured Nonpriority Claim \$</b> _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		THIS SPACE IS FOR COURT USE ONLY  <div style="border: 2px solid black; padding: 10px; margin: 0 auto; width: 150px;"> <b>RECEIVED</b>                       21 2006   <b>CLAIMS PROCESSING CENTER</b>  <b>USBC, SDNY</b> </div>
<b>8. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		
<b>9. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>10. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim		THIS SPACE IS FOR COURT USE ONLY
Date <u>7/24/06</u>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>Donna L. Williams-Alexander</u>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to



054448106073100000000538

EEOC Form 5 (5/01)

<b>CHARGE OF DISCRIMINATION</b> <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC		Agency(ies) Charge No(s): <b>220-2005-00381</b>
<b>Ohio Civil Rights Commission</b> and EEOC <small>State or local Agency, if any</small>				
Name (Indicate Mr., Ms., Mrs.) <b>Ms. Amy M. Hauke</b> <i>McCullough</i>		Home Phone No. (Incl Area Code) <b>(419) 625-2925</b>		Date of Birth <b>04-06-1980</b>
Street Address <b>Po Box 1867 Sandusky, OH 44870</b>				
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)				
Name <b>DELPHI AUTOMOTIVE</b>		No. Employees, Members <b>500 or More</b>		Phone No. (Include Area Code) <b>(419) 627-7000</b>
Street Address <b>2509 Hayes Ave., Sandusky, OH 44870</b>				
Name		No. Employees, Members		Phone No. (Include Area Code)
Street Address				
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify below.)				DATE(S) DISCRIMINATION TOOK PLACE Earliest    Latest <b>06-15-2004    11-01-2004</b> <input type="checkbox"/> CONTINUING ACTION
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p><b>I began working for the above named Respondent on November 29, 1999 as a Machine Operator. My current job title is General Service Attendant (GSA). On or about June 15, 2004 and continuing on an ongoing basis thereafter, my immediate supervisor, Greg McKown, began making sexually offensive comments to me and putting his arm around me and intentionally brushing up against my breasts. Each time, I told McKown his actions were offensive and to stop, but he kept harassing me.</b></p> <p><b>In October 2004, I warned McKown not to touch me again. Immediately afterwards, I was written up and suspended for not following instructions. On November 1, 2004, I confronted McKown again and told him I would no longer tolerate working in the sexually hostile environment he created. On November 3, 2004, a meeting was held with Management, and I made them aware of the situation. No corrective action was taken.</b></p> <p><b>I believe I have been discriminated against because of my sex, female, and retaliated against for complaining about a protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended.</b></p>				
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements		
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT		
<div style="display: flex; justify-content: space-between;"><div><i>12-20-04</i> Date</div><div><i>Amy May McCullough</i> Charging Party Signature</div></div>		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)		

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

2008 MAR 27 AM 9:52

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

DELPHI CORPORATION,

Defendant.

CIVIL ACTION NO.

3:06CV0680

JUDGE KATZ

COMPLAINT AND  
JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. §2000e, et seq), ("Title VII") and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of sex, female and to make whole Amy McCullough and similarly situated employees who were adversely affected by Defendant's unlawful practices.

As alleged with greater particularity in paragraph 7 below, the Commission alleges that beginning in June of 2004, Defendant subjected its employee, Amy McCullough, to a pattern of severe and pervasive sexual harassment resulting in the creation of a sexually hostile work environment for Ms. McCullough and similarly

situated females. As a result of the discrimination, Ms. McCullough suffered emotional distress.

### **JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f) (1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within The jurisdiction of the United States District Court for the Northern District of Ohio, Western Division.

### **PARTIES**

3. Plaintiff, the Equal Employment Opportunity Commission ("Commission"), is the Agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by Section 706(f) (1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant, Delphi Corporation ("Employer") has continuously been a corporation doing business in the State of Ohio and the City of Sandusky and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701 (b), (g) and (h) of Title VII, 42 U.S.C. § 2000e (b), (g) and (h).



**STATEMENT OF CLAIMS**

6. More than thirty days prior to institution of this lawsuit, Amy M. McCullough filed charges with the Commission alleging violations of Title VII by Defendant Employer. All conditions precedent to the institution of this suit have been fulfilled.

7. Beginning during the month of June of 2004, Defendant Employer engaged in unlawful employment practices in its Sandusky, Ohio location, by subjecting Amy McCollough to a sexually hostile work environment based on her sex, in violation of Section 703 of Title VII, 42 U.S.C. §2000e-2. These unlawful practices include, but are not limited to the following:

a) Amy M. McCullough has been employed at Defendant's plant since November of 1999. In June of 2004, shortly after she came under the supervision of Greg McKown, she was subjected to a pattern of severe and pervasive sexual harassment perpetrated by McKown.

b) The sexual harassment perpetrated by McKown against Ms. McCullough consisted of constant inappropriate remarks and touching.

c) Ms. McCullogh made it clear from the beginning of the harassment that it was unwelcome and she objected to the behavior.

d) Ms. McCullough complained about the inappropriate conduct not only to McKown, she also complained to his supervisor and other management personnel at Defendant.

e) Despite her complaints, Defendant Employer failed to stop the harassment and allowed a workplace permeated with severe and pervasive harassment based on sex, female;

f) Defendant Employer subjected Amy M. McCullough and similarly situated female employees to a pattern of severe and pervasive sexual harassment during her/their employment;

g) Defendant Employer failed to exercise reasonable care to prevent and eradicate the sexual harassment;

h) Defendant's conduct caused Amy M. McCullough emotional suffering and anxiety which required medical attention.

8. The effect of the practices complained of deprived Amy M. McCullough of equal employment opportunities and adversely affected her status as an employee due to impermissible considerations of sex.

9. The unlawful practices complained of above were intentional.

10. The unlawful employment practices complained of above were undertaken with malice and/or reckless indifference to the federally protected rights of Amy M. McCullough.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns and all persons in active concert or participation with it, from discriminating against individuals by the implementation of practices and policies which prevent discrimination on the basis of sex.

B. Order Defendant Employer to institute and carry out policies, practices and programs which provide equal employment opportunities for persons regardless of sex and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole Amy M. McCullough by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Defendant Employer to make whole Amy M. McCullough by providing affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to, back pay and front pay in amounts to be proven at trial.

E. Order Defendant Employer to make whole Amy M. McCullough by providing compensation for past and future pecuniary losses, in amounts to be proven at trial.

F. Order Defendant Employer to make whole Amy M. McCullough by providing compensation for past and future non-pecuniary losses in amounts to be proven at trial.

G. Grant an order assessing punitive damages against Defendant Employer for its malicious and reckless conduct described herein above in amounts to be determined at trial.

H. Grant such further relief as the Court deems necessary and proper in the public interest.

I. Award the Commission its costs in this action.

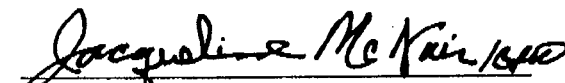
**JURY TRIAL DEMAND**

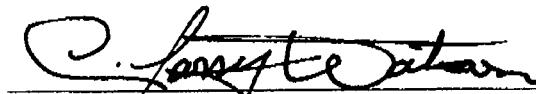
The Commission requests a jury trial on all questions of fact raised by its  
Complaint.

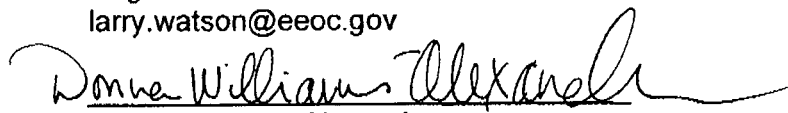
Respectfully submitted,

JAMES L. LEE  
DEPUTY GENERAL COUNSEL

GWENDOLYN YOUNG REAMS  
ASSOCIATE GENERAL COUNSEL  
1801 L. Street, N.W.  
Washington, D.C. 20507

  
Jacqueline McNair  
Regional Attorney

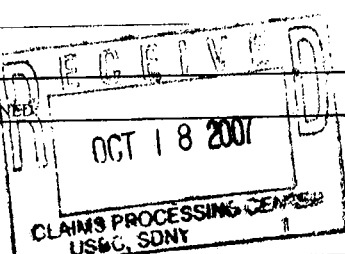
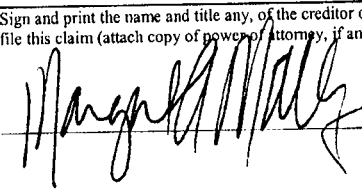
  
C. Larry Watson  
Associate Regional Attorney  
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larry.watson@eeoc.gov

  
Donna Williams-Alexander  
Trial Attorney  
Registration No. 0037838  
donna.williams-alexander@eeoc.gov

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
Cleveland Field Office  
Anthony J. Celebrezze Federal Office Building  
1240 East Ninth Street - Suite 3001  
Cleveland, Ohio 44199  
(216) 522-7454  
(216) 522-7430 fax  
donna.williams-alexander@eeoc.gov

**Exhibit 3**  
**Claim No. 16727**

FORM B10 (Official Form 10) (4/98)

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor <b>Delphi Corp. et al</b>	Case Number <b>05-44481</b>	Claim #16727 USBC SDNY Delphi Corporation, et al. 05-44481 (RDD)
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor <b>U.S. Equal Employment Opportunity Commission</b>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.	
Name and address where notices should be sent: <b>Margaret A. Malloy Trial Attorney U.S. Equal Employment Opportunity Commission 33 Whitehall St. New York, NY 10004 212-336-3690</b>	<input checked="" type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	THIS SPACE IS FOR COURT USE ONLY
ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR: <b>NA</b>	Check here if this claim: <input type="checkbox"/> replaces <input type="checkbox"/> amends a previously filed claim, dated: _____	
1. BASIS FOR CLAIM: <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other (Describe briefly): <b>Violation of Americans with Disabilities Act 42 U.S.C. § 12101 et seq.</b> (date) (date) <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input checked="" type="checkbox"/> Wages, salaries, and compensations (fill out below) Your SS#: _____ Unpaid compensation for services performed from _____ to _____		
2. DATE DEBT WAS INCURRED: <b>May 21, 2004</b>		3. IF COURT JUDGMENT, DATE OBTAINED: _____
4. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED: <b>Unliquidated</b> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. SECURED CLAIM. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other: Value of Collateral: Amount of arrearage and other charges at time case filed included in secured claim, if any:		
6. UNSECURED PRIORITY CLAIM. <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim. Amount entitled to priority \$ <b>unliquidated</b> Specify the priority of the claim: <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$4,000)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$1800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties of governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). * Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
7. CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 8. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. 9. DATE-STAMPED COPY: To receive an acknowledgment copy of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE FOR COURT USE ONLY  <b>RECEIVED</b> <b>OCT' 16 2007</b> <b>KURTZMAN CARSON</b>
Date <b>October 12, 2007</b>	Sign and print the name and title any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)  <b>Margaret A. Malloy Trial Attorney</b>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both



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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,**

**Plaintiff,**

**-against-**

**DELPHI CORP.,**

**Defendant.**

**X**

**:**

**:**

**:**

**:**

**:**

**:**

**:**

**:**

**:**

**:**

**X**

**CIVIL ACTION NO.**

**COMPLAINT**

**JURY TRIAL DEMANDED**

**NATURE OF THE ACTION**

This is an action under Title I of the Americans with Disabilities Act of 1990 ("ADA") and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices and to provide relief to Stanley Straughter ("Charging Party") and to a class of similarly situated individuals who have been adversely affected by such practices. As alleged with particularity below, Defendant Delphi Corp. ("Defendant") violated the ADA by making disability-related inquiries of employees, including Charging Party, for purposes inconsistent with those permitted by the ADA, and by taking adverse employment action against Charging Party and a class of similarly situated individuals in retaliation for and interfering with their exercise of their rights protected by the ADA.

**JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12117(a), which incorporates by reference §§ 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e-5(f)(1) and (3).

2. The unlawful employment practices alleged were committed within the jurisdiction of the United States District Court for the Western District of New York.

### **PARTIES**

3. Plaintiff, Equal Employment Opportunity Commission ("EEOC"), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1).

4. At all relevant times, Defendant has continuously been a corporation doing business in the State of New York and has continuously employed at least fifteen employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000-e(g) and (h).

6. At all relevant times, Defendant has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

### **STATEMENT OF CLAIMS**

7. More than thirty days prior to the institution of the lawsuit, Charging Party filed a charge with the EEOC alleging violations of Title I of the ADA by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least 2004, Defendant has engaged in unlawful employment practices in violation of Sections 102 and 503 of the ADA, 42 U.S.C. §§ 12112(d)(4)(A) and 12203, as outlined below:



a. Charging Party was employed as a Laborer by Defendant from May 22 to August 17, 2006.

b. On August 14 and 15, 2006, Charging Party called in sick.

c. On August 16, 2006, Charging Party returned to work with a doctor's note verifying that he had been unable to work due to illness on the two days that he was out.

d. Defendant informed Charging Party that he was required to sign an authorization form to allow Defendant to obtain information from Charging Party's personal physician about his medical condition.

e. Charging Party refused to sign the form, stating that he believed the inquiry into his medical condition was unlawful.

f. Defendant informed Charging Party that it was Defendant's policy to check all doctors' notes to verify that the reasons for the absence are acceptable, and that although an employee could refuse to sign the release, the result would be that Defendant would not accept the excuse for the absence.

g. Charging Party asked to take a copy of the form and respond the next day. Defendant consented to this request.

h. Charging Party then modified the form to allow Defendant to verify with his doctor that he had been unable to work on the two days that he was out, but not to discuss his actual medical condition.

i. When Charging Party presented Defendant with the modified form the next day, he was told that it was unacceptable.

j. Charging Party again stated his belief that it was unlawful for Defendant to demand to know his medical information.

k. Defendant immediately fired Charging Party for being “an unsatisfactory temporary employee.”

9. The ADA prohibits employers from making inquiries as to whether an employee is an individual with a disability unless the inquiry is shown to be job-related and consistent with business necessity.

10. Defendant’s requirement that employees returning from sick leave sign a release of their medical information is a disability-related inquiry that is not job-related or consistent with business necessity.

11. Defendant’s requirement that employees returning from sick leave sign a release of their medical information and its practice of disciplining, withholding pay from and/or taking any other adverse employment action against employees who fail to comply with this unlawful policy constitutes coercion, intimidation and/or interference with employees’ exercise or enjoyment of their rights under the ADA.

12. Defendant’s practice of disciplining, withholding pay from and/or taking any other adverse employment action against employees who refuse to comply with the unlawful policy constitutes retaliation against such employees for engaging in activity protected by the ADA.

13. The effect of the practices complained of above has been to deprive Charging Party and a class of other individuals of equal employment opportunities and otherwise adversely affect their status as employees.

14. The effect of the practices complained of above has been to inflict emotional pain, suffering, and inconvenience upon Charging Party and similarly situated individuals.

15. The unlawful employment practices complained of above were intentional.

16. The unlawful employment practices complained of above are continuing.

17. The unlawful employment practices complained of above were done with malice and reckless disregard for the federally protected rights of Charging Party and similarly situated individuals, in violation of 42 U.S.C. § 12101, *et seq.*

**PRAYER FOR RELIEF**

Wherefore, EEOC respectfully requests that this Court:

- A. Enjoin Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from making any disability-related inquiries that are not job-related and consistent with business necessity;
- B. Order Defendant to institute and carry out policies, practices, and programs that provide equal employment opportunities for qualified individuals with disabilities and that eradicate the effects of its past and present unlawful employment practices;
- C. Order Defendant to make whole all those individuals affected by the unlawful employment practices described above, by providing appropriate back-pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary including reinstatement to eradicate the effects of Defendants' unlawful employment practices;
- D. Order Defendant to make whole all of those individuals adversely affected by the unlawful employment practices described above by providing compensation for nonpecuniary losses, including pain, suffering, and humiliation in amounts to be determined at trial;
- E. Order Defendant to pay all those individuals adversely affected by the unlawful employment practices described above punitive damages for Defendant's malicious and/or reckless conduct in amounts to be determined at trial.
- G. Grant such further relief as the Court deems necessary and proper.

H. Award the EEOC its costs in this action.

**JURY TRIAL DEMAND**

EEOC requests a jury trial on all questions of fact raised by this Complaint.

Dated: September 27, 2007

Ronald S. Cooper  
General Counsel

James Lee  
Deputy General Counsel

Gwendolyn Y. Reams  
Associate General Counsel

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
1801 L Street, N.W.  
Washington, D.C. 20507

s/Elizabeth Grossman

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Elizabeth Grossman  
Regional Attorney

s/Judy Keenan

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Judy Keenan  
Supervisory Trial Attorney

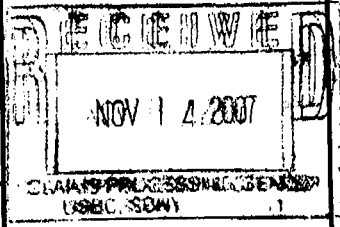
s/Margaret A. Malloy

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Margaret A. Malloy  
Trial Attorney, U.S. EEOC  
33 Whitehall Street, 5<sup>th</sup> Floor  
New York, New York 10004  
margaret.malloy@eeoc.gov  
Phone 212-336-3690  
Fax 212-336-3623

**Exhibit 4**  
**Claim No. 16747**

FORM B10 (Official Form 10) (04/05)

UNITED STATES BANKRUPTCY COURT <u>Southern</u> DISTRICT OF <u>New York</u>		PROOF OF CLAIM
Name of Debtor <u>Delphi Corporation, et al</u>	Case Number <u>05-44481 : RDD</u>	Claim #16747 USBC SDNY Delphi Corporation, et al 05-44481 (RDD)  <b>RECEIVED</b>  NOV 16 2007  KURTZMAN CARSON  THIS SPACE IS FOR COURT USE ONLY
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <u>U.S. Equal Employment Opportunity Commission</u>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: <u>Anthony J. Celebrezze Building 1240 East Ninth St. Suite 3001 Cleveland, Ohio 44149</u>	Telephone number: <u>216-522-7464</u>	
Account or other number by which creditor identifies debtor:	Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____	
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods Sold / Services Performed <input type="checkbox"/> Customer Claim <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Money Loaned <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other _____ <input checked="" type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input checked="" type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
<b>2. Date debt was incurred:</b> <u>12-15-04 continuing violation</u>		<b>3. If court judgment, date obtained:</b>
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ _____ (unsecured) (secured) <u>30,000.00</u> <u>30,000.00</u> (priority) (Total) If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges <u>at time case filed</u> included in secured claim, if any: \$ _____		<b>7. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000)* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. \$10,000 and 180-day limits apply to cases filed on or after 4/20/05. Pub. L. 109-8.
<b>6. Unsecured Nonpriority Claim</b> \$ _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		
<b>8. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY  
<b>9. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>10. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim		
Date <u>11-13-07</u>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>Donna P. Williams - Alexander, Esq.</u>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both, 18 U.S.C. §§ 152 and 3571.



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Cleveland Field Office



**DONNA L. WILLIAMS-ALEXANDER**  
Senior Trial Attorney

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(216) 522-7454

Fax (216) 522-7430  
donna.williams-alexander@eeoc.gov

**Exhibit 5**  
**Claim No. 14309**



ORIGINAL

FORM B10 (Official Form 10) (04/05)

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor <b>Delphi Automotive Systems LLC</b>		Case Number <b>05-44640 (RDD)</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		<b>Received</b> <b>AUG 09 2006</b> <b>Kurtzman Carson</b> Claim #14309 USBC SDNY Delphi Corporation, et al. 05-44481 (RDD)
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>U.S. Environmental Protection Agency</b>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: <b>David J. Kennedy</b> <b>Assistant U.S. Attorney, SDNY</b> <b>86 Chambers Street, 3rd Floor</b> <b>New York, NY 10007</b> Telephone number: <b>(212) 637-2733</b>		
Account or other number by which creditor identifies debtor:		Check here <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <b>See attached.</b> <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____ <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
<b>2. Date debt was incurred:</b> <b>See attached.</b>		<b>3. If court judgment, date obtained:</b> <b>See attached.</b>
<b>4. Total Amount of Claim at Time Case Filed: \$</b> <u><b>See attached.</b></u> (unsecured) (secured) (priority) (Total) If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). <b>See attached.</b> Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		<b>7. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000)* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. \$10,000 and 180-day limits apply to cases filed on or after 4/20/05. Pub. L. 109-8.
<b>6. Unsecured Nonpriority Claim \$</b> _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		THIS SPACE IS FOR COURT USE ONLY <b>FILED</b> <b>U.S. BANKRUPTCY COURT</b> <b>SDNY</b> <b>2006 JUL 31 P 3:58 PM</b>
<b>8. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		
<b>9. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>10. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim		
Date <b>7/31/06</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <b>DAVID J. KENNEDY, A.U.I.A.</b>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.



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MICHAEL J. GARCIA  
United States Attorney for the  
Southern District of New York  
By: DAVID J. KENNEDY (DK-8307)  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
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Tel. No.: (212) 637-2733  
Fax No.: (212) 637-2686

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:	CHAPTER 11
DELPHI AUTOMOTIVE SYSTEMS LLC,	Case No. 05-44640-rdd
	Jointly Administered
Debtors.	

-----X

**PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

1. The United States files this Proof of Claim at the request of the U.S. Environmental Protection Agency ("EPA"), against debtor Delphi Automotive Systems LLC ("Delphi"), for response costs incurred and to be incurred by the United States under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675 at the Superfund Sites set forth herein in Paragraphs 2 through 7, infra. In addition, with respect to equitable remedies that are not within the Bankruptcy Code's definition of "claim," 11 U.S.C. § 101(5), this proof of claim is only filed in protective fashion. See, e.g., Paragraphs 3, 8, 9, and 10, infra.

2. Tremont City Landfill Superfund Site. Delphi is liable to the United States under CERCLA with respect to the Tremont City Landfill Superfund Site located at 3108 Snyder-

Domer Road, Tremont City, German Township, Clark County, Ohio (the "Tremont City Site"). The 80-acre Site includes several facilities including a closed 8.5 acre chemical waste landfill (the "Barrel Fill" facility), a closed 56 acre sanitary landfill (the "Landfill" facility), and a 15.5 acre closed oil recycling and hazardous waste storage and transfer operation (the "Waste Storage" facility). Delphi is liable to the United States because by contract, agreement or otherwise, it arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by Delphi at the Barrel Fill and Landfill facilities owned by another party or entity, and containing hazardous substances, pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3). Delphi disposed of drums and bulk wastes containing, inter alia, paint sludge, polyester resins, polystyrene, sulfuric acid sludge, paint waste, polyol resin and caustic sludge at the Barrel Fill facility and solid wastes at the Landfill facility. The closed Barrel Fill and Landfill operations are facilities within the meaning of CERCLA. There have been releases or threats of releases of hazardous substances, including but not limited to, inorganic compounds (antimony, arsenic, thallium, cyanide and lead) and volatile organic compounds (xylene, methylene chloride, ethyl benzene and acetone), from the facilities at the Tremont City Site. These hazardous substances have been released into the waterways, surface water, soils, and sediments at the Tremont City Site. Other potentially responsible parties may, along with Delphi, also be jointly and severally liable to the United States under CERCLA with respect to the Barrel Fill and Landfill facilities.

3. This Proof of Claim is filed in a protective manner with respect to Delphi's obligations to perform work with respect to the Tremont City Site. See Paragraph 8, infra. On October 3, 2002, EPA entered into an Administrative Order on Consent ("AOC")(Docket # V-

W-03-C-719) with Delphi that required Delphi, and six other respondents, inter alia, to conduct a Remedial Investigation/Feasibility Study ("RI/FS") at the Tremont City Site. Delphi and the remaining AOC respondents have completed the RI field work. EPA estimates that it may cost the jointly and severally liable parties, including Delphi, approximately \$1 million to complete the required work under the AOC, some of which has already been performed. EPA has not yet selected remedial action under CERCLA for the Barrel Fill and Landfill facilities at the Tremont City Site and Delphi has therefore not yet been ordered to perform remedial work, but may be ordered by a court or other authority found to have jurisdiction to do so in the future. Since investigations at the Barrel Fill and Landfill facilities at the Tremont City Site are continuing and remedial action has not yet been selected, the cost of Remedial Design/Remedial Action ("RD/RA") to Delphi is uncertain at this time, but the work with respect to these facilities could cost the jointly and severally liable parties, including Delphi, as much as a total of \$22.2 million or more, in addition to the \$1 million described above. EPA estimates that RD/RA work relating to the Barrel Fill facility could cost the jointly and severally liable parties, including Delphi, approximately \$7 million. EPA estimates that RI/FS work and RD/RA work relating to the Landfill facility could cost the jointly and severally liable parties, including Delphi, approximately \$14.5 million.

4. Response costs have been and will be incurred by EPA with respect to the Tremont City Site not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. Part 300, as amended. Under the AOC, Delphi is also liable to make payments for future oversight costs to EPA, which EPA estimates to be \$100,000. In addition, the United States has incurred unreimbursed

response costs to date of approximately \$820,000 with respect to the Barrel Fill and Landfill facilities at the Tremont City Site for previous work, including inter alia, a Preliminary Assessment/Site Investigation ("PA/SI"). Delphi is jointly and severally liable to the United States for the above amounts. Delphi is also jointly and severally liable for interest due under 42 U.S.C. § 9607(a). Other potentially responsible parties may along with Delphi also be jointly and severally liable to the United States for all of the above amounts plus interest due under 42 U.S.C. § 9607(a).

5. South Dayton Dump & Landfill Superfund Site. Delphi is liable to the United States under CERCLA with respect to the South Dayton Dump and Landfill Superfund Site ("South Dayton Site") located at 1975 Dryden Road, Moraine, Ohio. Delphi is liable to the United States because by contract, agreement or otherwise, it arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by Delphi at the South Dayton Site owned by another party or entity, and containing hazardous substances, pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3). Delphi arranged for the disposed of hazardous wastes, including but not limited to asbestos, flyash, metallic dust, oil and grease sludge and paint wastes at the South Dayton Site from several Delphi facilities in the Dayton and Kettering, Ohio area. The South Dayton Site is a facility within the meaning of CERCLA. The South Dayton Site was proposed for inclusion on the National Priorities List ("NPL"), pursuant to CERCLA Section 105, 42 U.S.C. § 9605, on September 23, 2004 (see 69 Fed. Reg. 56970). There have been releases or threats of releases of hazardous substances, including but not limited to, inorganic compounds (arsenic, cadmium, chromium, mercury and lead) and volatile and semi-volatile organic compounds (1,2-

dichloroethene, tetrachloroethene, toluene, polychlorinated biphenyls ("PCBs")), at the South Dayton Site. These hazardous substances have been released into the soil and groundwater at the South Dayton Site. Other potentially responsible parties may, along with Delphi, also be jointly and severally liable to the United States under CERCLA with respect to the South Dayton Site.

6. Response costs have been and will be incurred by EPA with respect to the South Dayton Site not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. Part 300, as amended. The United States has incurred unreimbursed response costs to date of approximately \$404,349 with respect to the South Dayton Site. Delphi is liable to the United States for this amount. Delphi is also liable for interest due under 42 U.S.C. § 9607(a). Other potentially responsible parties may along with Delphi also be jointly and severally liable to the United States for all of the above amounts plus interest due under 42 U.S.C. § 9607(a).

7. EPA expects to incur future response costs in connection with the remedial design and remedial action for the South Dayton Site. These costs have been estimated by EPA at between \$20 and 50 million. Along with other identified PRPs, Delphi is jointly and severally liable to the United States for these amounts.

8. Protective Filing For Work Obligations. The United States is not required to file a proof of claim with respect to Delphi's injunctive obligations to comply with work requirements arising under Orders of Courts, Administrative Orders, and other environmental regulatory requirements imposed by law that are not claims under 11 U.S.C. § 101(5). Delphi and any reorganized debtor(s) must comply with such mandatory injunctive and regulatory and compliance requirements. The United States reserves the right to take future actions to enforce

any such obligations of Delphi. While the United States believes that its position will be upheld by the Court, the United States has filed only in protective fashion with respect to such obligations and requirements as indicated herein to protect against the possibility that Delphi will contend that it does not need to comply with any such obligations and requirements and the Court finds that it is not required to do so. Therefore, a protective contingent claim is filed in the alternative for such obligations and requirements but only in the event that the Court finds that such obligations and requirements are dischargeable claims under 11 U.S.C. § 101(5) rather than obligations and requirements that reorganized Delphi must comply with. Nothing in this Proof of Claim constitutes a waiver of any rights of the United States or an election of remedies with respect to such rights and obligations.

9. RCRA Compliance and Work Obligations. This Proof of Claim is filed in a protective manner with respect to Delphi's compliance and work obligations under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 - 6992k. See Paragraph 8, supra. RCRA establishes a comprehensive regulatory program for generators of hazardous waste and for owners and operators of facilities that treat, store, or dispose of hazardous waste. Delphi is the owner and operator of RCRA-regulated facilities including, but not limited to, Vandalia, Ohio (Vandalia Facility), as well as other locations. Pursuant to its authority under RCRA, EPA has promulgated regulations applicable to such generators and such owners and operators of hazardous waste management facilities. The federal RCRA implementing regulations are set forth at 40 C.F.R. Part 260 et seq. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA has authorized various States to administer various aspects of the hazardous waste management program in such States. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), these

authorized State hazardous waste management program are enforceable by EPA. Under RCRA, Delphi is required, inter alia, to operate in compliance with RCRA regulatory requirements, implement closure and post-closure work and corrective action work, and perform any necessary action with respect to any imminent and substantial endangerment to health or the environment, see, e.g., 42 U.S.C. §§ 6924, 6928, 6973, as required by RCRA and/or RCRA permits or Administrative Orders. For example, in or about January 2002, EPA and Delphi entered into a RCRA Administrative Order on Consent with regard to the Vandalia, Ohio Facility, which requires, inter alia, the continuing implementation of a Corrective Measures Plan at that Facility. Delphi is liable for injunctive and compliance obligations that it is required to perform under RCRA, RCRA permits, and all work requirements under RCRA permits and administrative orders. It is the position of the United States that a proof of claim is not required to be filed for injunctive, compliance, and regulatory obligations and requirements under RCRA. See Paragraph 8, supra. Other liable parties may along with Delphi also be jointly and severally liable to the United States under RCRA.

10. Property of the Estate. Delphi also has or may in the future have environmental liabilities for properties that are part of its bankruptcy estate and/or for the migration of hazardous substances from property of its bankruptcy estate. For example, Delphi has voluntary corrective action agreements for ongoing investigations pursuant to schedules approved by EPA for certain facilities set forth in Paragraph 9, supra. In accordance with 28 U.S.C. § 959, Delphi is required to comply with non-bankruptcy law, including all applicable environmental laws, in managing and operating its property. Upon confirmation of any Plan of Reorganization, reorganized Delphi will be liable as owner or operator of property in accordance with applicable



environmental law. The United States is not required to file a proof of claim relating to property of the estate other than for response costs incurred prior to the petition date. The United States reserves the right to file an application for administrative expense or take other appropriate action in the future with respect to property of the estate. This Proof of Claim is filed only protectively with respect to property of the estate.

11. This Proof of Claim reflects certain known liabilities of Delphi to the United States. The United States reserves the right to amend this claim to assert subsequently discovered liabilities. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the debtor by this or any other federal agency.

12. The United States has not perfected any security interest on its claims against Delphi.

13. This claim is filed as a general unsecured claim except to the extent of any secured/trust interest in insurance proceeds received by Delphi on account of environmental liability to the United States, disputed past cost amounts held in escrow by Delphi pending dispute resolution, and to the extent administrative expense priority exists relating to property of the estate, post-petition violations of law, or otherwise. In addition, the United States will file any application for administrative expense priority at the appropriate time. The United States' position with respect to injunctive, compliance, regulatory, and work obligations that are not claims under 11 U.S.C. § 101(5) is set forth in Paragraph 8, supra.

14. Except as stated in this Proof of Claim, no judgments against Delphi have been rendered on this Proof of Claim.


15. This Proof of Claim is also filed to the extent necessary to protect the United States' rights relating to any insurance proceeds received by Delphi relating to sites discussed herein and any funds being held in escrow by Delphi relating to the sites discussed herein.

Dated: New York, New York  
July 31, 2006

Respectfully submitted,

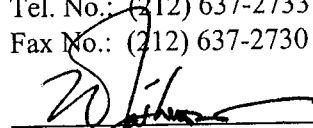
FOR THE UNITED STATES OF AMERICA:

MICHAEL J. GARCIA  
United States Attorney for the  
Southern District of New York



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DAVID J. KENNEDY (DK-8307)  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
Tel. No.: (212) 637-2733  
Fax No.: (212) 637-2730



---

W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environment and Natural Resources Division

ALAN S. TENENBAUM  
National Bankruptcy Coordinator  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 514-5409



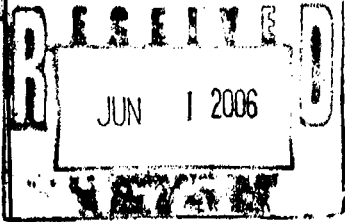
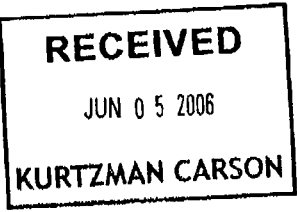
FRANCIS J. BIXOS  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 616-6552

OF COUNSEL:

DIANA L. EMBIL  
THOMAS C. NASH  
THOMAS WILLIAMS  
Associate Regional Counsels  
U.S. Environmental Protection Agency-- Region 5--Mail Code C14J  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3594

**Exhibit 6**  
**Claim No. 7314**

FORM B10 (Official Form 10/10/05)

<b>UNITED STATES BANKRUPTCY COURT</b> <u>SOUTHERN</u> <b>DISTRICT OF</b> <u>NEW YORK</u>		<b>PROOF OF CLAIM</b>
Name of Debtor <b>DELPHI AUTOMOTIVE SYSTEMS SERVICES LLC</b>		Case Number <b>05-44632-RDD</b>
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>Department of the Treasury - Internal Revenue Service</b>		
Name and address where notices should be sent: <b>Internal Revenue Service INTERNAL REVENUE SERVICE 290 BROADWAY, 5TH FL NEW YORK, NY 10007</b>		
Telephone number: <b>(212) 436-1038</b> Creditor #:		
Last four digits of account or other number by which creditor identifies debtor: <b>see attachment</b>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other _____		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)
<b>2. Date debt was incurred:</b> <b>see attachment</b>		<b>3. If court judgment, date obtained:</b>
<b>4. Classification of Claim.</b> Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations.		
<b>Unsecured Nonpriority Claim \$</b> _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		<b>Secured Claim.</b> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input checked="" type="checkbox"/> Real Estate <input checked="" type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <b>see below*</b> Value of Collateral: \$ <b>see below*</b> *All of debtor(s) right, title and interest to property - 26 U.S.C. § 6321. Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ <b>103,138.05</b>
<b>Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).		<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
<b>5. Total Amount of Claim at Time Case Filed:</b> \$ _____ (unsecured) <b>103,138.05</b> (secured) _____ (priority) <b>103,138.05</b> (Total)		
<input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>6. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. (except as noted on attachment)		THIS SPACE IS FOR COURT USE ONLY  
<b>7. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>8. Date-Stamped Copy:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date <b>05/26/2006</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <b>MARIA VALERIO, Insolvency Specialist</b>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both, 18 U.S.C. §§ 152 and 3571



05446320606010000000000001

# Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service



Form 10  
Attachment

In the Matter of: DELPHI AUTOMOTIVE SYSTEMS SERVICES  
LLC  
5725 DELPHI DRIVE  
TROY, MI 48098

Docket Number	05-44632-RDD
Type of Bankruptcy Case	CHAPTER 11
Date of Petition	10/08/2005

The United States has the right of setoff or counterclaim(s) in the amount of \$103,138.05. The identification of the right of setoff in this amount is based on available data and is not intended to waive or limit the right to setoff against this claim debts owed to this debtor by this or any other federal agency that have not been identified. All rights of setoff are preserved and will be asserted to the extent lawful.

FICA 12/31/04 & 9/30/05 FUTA 12/31/05 (PARTIAL)

## Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date Office Location
38-3568834	WT-FICA	06/30/2005	10/03/2005	\$0.00	\$103,138.05	\$0.00	Right to setoff

Total Amount of Secured Claims:

**\$103,138.05**



INTERNAL REVENUE SERVICE  
290 BROADWAY, 5TH FL  
NEW YORK, NY 10007

SOUTHERN NEW YORK BANKRUPTCY COURT  
U.S. BANKRUPTCY COURT  
ONE BOWLING GREEN  
NEW YORK, NY 10004-1408

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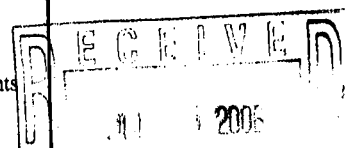
Please Fold Here. Do not detach. Please be sure our address shows through the envelope window.

Internal Revenue Service  
INTERNAL REVENUE SERVICE  
290 BROADWAY, 5TH FL  
NEW YORK, NY 10007

**Exhibit 7**  
**Claim No. 14154**



FORM B10 (Official Form 10)(10/05)

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor DELPHI AUTOMOTIVE SYSTEMS SERVICES LLC	Case Number 05-44632-RDD	Claim #14154 USBC SDNY Delphi Corporation, et al. 05-44481 (RDD)
<b>NOTE:</b> This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): Department of the Treasury - Internal Revenue Service	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	<b>Received</b> <b>AUG 09 2006</b> <b>Kurtzman Carson</b> <small>THIS SPACE IS FOR COURT USE ONLY</small>
Name and address where notices should be sent: Internal Revenue Service INTERNAL REVENUE SERVICE 290 BROADWAY, 5TH FL NEW YORK, NY 10007		
Telephone number: (212) 436-1038 Creditor #:	Last four digits of account or other number by which creditor identifies debtor: see attachment	Check here <input type="checkbox"/> replaces a previously filed claim, dated: 05/26/2006 <input checked="" type="checkbox"/> amends
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other _____ <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
<b>2. Date debt was incurred:</b> see attachment		<b>3. If court judgment, date obtained:</b>
<b>4. Classification of Claim.</b> Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations. <b>Unsecured Nonpriority Claim \$</b> _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority. <b>Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <b>Secured Claim.</b> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input checked="" type="checkbox"/> Real Estate <input checked="" type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <u>see below*</u> Value of Collateral: \$ <u>see below*</u> *All of debtor(s) right, title and interest to property - 26 U.S.C § 6321. Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ <u>9,281.26</u> <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
<b>5. Total Amount of Claim at Time Case Filed:</b> \$ _____ (unsecured) <u>9,281.26</u> (secured) _____ (priority) <u>9,281.26</u> (Total) <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>6. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. (except as noted on attachment)		<b>THIS SPACE IS FOR COURT USE ONLY</b> 
<b>7. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>8. Date-Stamped Copy:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date 07/27/2006	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>/s/ MARIA VALERIO, Insolvency Specialist</u>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment 1



# Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service



**Form 10**  
Attachment

In the Matter of: **DELPHI AUTOMOTIVE SYSTEMS SERVICES  
LLC  
5725 DELPHI DRIVE  
TROY, MI 48098**

Docket Number
05-44632-RDD
Type of Bankruptcy Case
Chapter 11
Date of Petition
10/08/2005

Amendment No. 1 to Proof of Claim dated 05/26/2006

The United States has the right of setoff or counterclaim(s) in the amount of \$9,281.26. The identification of the right of setoff in this amount is based on available data and is not intended to waive or limit the right to setoff against this claim debts owed to this debtor by this or any other federal agency that have not been identified. All rights of setoff are preserved and will be asserted to the extent lawful.

FICA 12/31/04

**Secured Claims** (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date Office Location
38-3568834	WT-FICA	06/30/2005	10/03/2005	\$0.00	\$9,281.26	\$0.00	Right to setoff

**Total Amount of Secured Claims:**

**\$9,281.26**

**Exhibit 8**  
**Claim No. 15822**

FORM E10 (Official Form 10)(10/05)

<b>UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK</b>		<b>PROOF OF CLAIM</b>
Name of Debtor <b>DELPHI AUTOMOTIVE SYSTEMS SERVICES LLC</b>		Case Number <b>05-44632-RDD</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>Department of the Treasury - Internal Revenue Service</b>		<div style="border: 1px solid black; padding: 5px; text-align: center;"> <b>RECEIVED</b>  <b>AUG 1 2006</b>  <small>U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK</small> </div>
Name and address where notices should be sent: <b>Internal Revenue Service INTERNAL REVENUE SERVICE 290 BROADWAY, 5TH FL NEW YORK, NY 10007</b>		
Telephone number: <b>(212) 436-1038</b> Creditor #:		
Last four digits of account or other number by which creditor identifies debtor: <b>see attachment</b>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other _____		<div style="text-align: center; border: 1px solid black; padding: 5px;"> <b>RECEIVED</b>  <b>'AUG 18 2006'</b>  <b>KURTZMAN CARSON</b> </div> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)
<b>2. Date debt was incurred:</b> <b>see attachment</b>		<b>3. If court judgment, date obtained:</b>
<b>4. Classification of Claim.</b> Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations.		
<b>Unsecured Nonpriority Claim \$</b> _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		<b>Secured Claim.</b> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input checked="" type="checkbox"/> Real Estate <input checked="" type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <u>see below*</u> Value of Collateral: \$ <u>see below*</u> <small>* All of debtor(s) right, title and interest to property - 26 U.S.C. § 6321.</small> Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ <u>9,281.26</u>
<b>Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000)* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).		<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
<b>5. Total Amount of Claim at Time Case Filed:</b> \$ _____ (unsecured) <u>9,281.26</u> (secured) _____ (priority) <u>9,281.26</u> (Total) <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>6. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. (except as noted on attachment) <b>7. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. <b>8. Date-Stamped Copy:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY <div style="border: 1px solid black; padding: 10px; transform: rotate(-10deg);"> <b>RECEIVED</b>  <b>AUG - 9 2006</b>  <b>CLAIMS PROCESSING CENTER USBC, SDNY</b> </div>
Date <b>07/27/2006</b> Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>/s/ MARIA VALERIO, Insolvency Specialist</u>		

Penalty for presenting fraudulent claim: Fine of up to \$500



0544632060809000000000001

# Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service



**Form 10**  
Attachment

In the Matter of: DELPHI AUTOMOTIVE SYSTEMS SERVICES  
LLC  
5725 DELPHI DRIVE  
TROY, MI 48098

Docket Number

05-44632-RDD

Type of Bankruptcy Case

Chapter 11

Date of Petition

10/08/2005

Amendment No. 1 to Proof of Claim dated 05/26/2006

The United States has the right of setoff or counterclaim(s) in the amount of \$9,281.26. The identification of the right of setoff in this amount is based on available data and is not intended to waive or limit the right to setoff against this claim debts owed to this debtor by this or any other federal agency that have not been identified. All rights of setoff are preserved and will be asserted to the extent lawful.

FICA 12/31/04

## Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date Office Location
38-3568834	WT-FICA	06/30/2005	10/03/2005	\$0.00	\$9,281.26	\$0.00	Right to setoff

Total Amount of Secured Claims:

**\$9,281.26**

**Exhibit 9**  
**Claim No. 7498**

**FORM B10** (Official Form 10)(10/05)

FORM B10 (Official Form 10)(10/05)		PROOF OF CLAIM	
UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK			
Name of Debtor DELPHI CORPORATION		Case Number 05-44481-RDD	
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.			
Name of Creditor (The person or other entity to whom the debtor owes money or property): Department of the Treasury - Internal Revenue Service		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: Internal Revenue Service INTERNAL REVENUE SERVICE 290 BROADWAY, 5TH FL NEW YORK, NY 10007		RECEIVED JUN 07 2006 KURTZMAN CARSON THIS SPACE IS FOR COURT USE ONLY	
Telephone number: (212) 436-1038 Creditor #:			
Last four digits of account or other number by which creditor identifies debtor: see attachment		Check here <input type="checkbox"/> replaces a previously filed claim, dated: _____ if this claim <input type="checkbox"/> amends	
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other _____		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)	
2. Date debt was incurred: see attachment		3. If court judgment, date obtained:	
4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations. Unsecured Nonpriority Claim \$ 10,427.75 <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		Secured Claim. <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input checked="" type="checkbox"/> Real Estate <input checked="" type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other see below* Value of Collateral: \$ see below* * All of debtor(s) right, title and interest to property - 26 U.S.C. § 6321. Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ 11,411.00	
Unsecured Priority Claim. <input checked="" type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ 10,000.00 Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).		<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
5. Total Amount of Claim at Time Case Filed: \$ 10,427.75 11,411.00 10,000.00 31,838.75 (unsecured) (secured) (priority) (Total)			
<input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.			
6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. (except as noted on attachment)		THIS SPACE IS FOR COURT USE ONLY	
7. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		RECEIVED JUN 5 2006 KURTZMAN CARSON	
8. Date-Stamped Copy: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.			
Date 06/01/2006	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): /s/ MARIA VALERIO, Insolvency Specialist		

**Penalty for presenting fraudulent claim:** Fine of up to \$500,000 or im



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# Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service



Form 10  
Attachment

In the Matter of: DELPHI CORPORATION  
5725 DELPHI DRIVE  
TROY, MI 48098

Docket Number

05-44481-RDD

Type of Bankruptcy Case

CHAPTER 11

Date of Petition

10/08/2005

The United States has the right of setoff or counterclaim(s) in the amount of \$11,411.00. The identification of the right of setoff in this amount is based on available data and is not intended to waive or limit the right to setoff against this claim debts owed to this debtor by this or any other federal agency that have not been identified. All rights of setoff are preserved and will be asserted to the extent lawful.

*FICA 9/30/05 & Excise 6/30/05*

## Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date Office Location
38-3430473	WT-FICA	06/30/2005	09/05/2005	\$0.00	\$11,411.00	\$0.00	Right to setoff

Total Amount of Secured Claims:

**\$11,411.00**

## Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
38-3430473	WT-FICA	06/30/2005	09/05/2005	\$0.00	\$0.00
38-3430473	FOREIGN	12/31/2005	1 UNASSESSED-NO RETURN	\$10,000.00	\$0.00
				\$10,000.00	\$0.00

Total Amount of Unsecured Priority Claims:

**\$10,000.00**

## Unsecured General Claims

Penalty to date of petition on unsecured priority claims (including interest thereon) . . . . . \$10,427.75

Total Amount of Unsecured General Claims:

**\$10,427.75**

1 UNASSESSED TAX LIABILITIES(S) HAVE BEEN LISTED ON THIS CLAIM BECAUSE OUR RECORDS SHOW NO RETURN(S) FILED. WHEN THE DEBTOR(S) FILES THE RETURN OR PROVIDES OTHER INFORMATION AS REQUIRED BY LAW THE CLAIM WILL BE AMENDED.



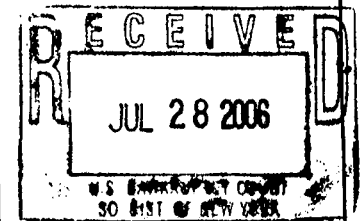
**Exhibit 10**  
**Claim No. 12127**

FORM B10 (Official Form 10)(10/05)

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor <b>DELPHI CORPORATION</b>		Case Number <b>05-44481-RDD</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>Department of the Treasury - Internal Revenue Service</b>		<b>Received</b> <b>AUG 05 2006</b> <b>Kurtzman Carson</b>  Claim #12127 USBC SDNY Delphi Corporation, et al. 05-44481 (RDD)  THIS SPACE IS FOR COURT USE ONLY
Name and address where notices should be sent: <b>Internal Revenue Service INTERNAL REVENUE SERVICE 290 BROADWAY, 5TH FL NEW YORK, NY 10007</b>		
Telephone number: <b>(212) 436-1038</b> Creditor #:		
Last four digits of account or other number by which creditor identifies debtor: <b>see attachment</b>		
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other _____		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
2. Date debt was incurred: <b>see attachment</b>		Check here <input type="checkbox"/> replaces a previously filed claim, dated: <b>06/01/2006</b> if this claim <input checked="" type="checkbox"/> amends
4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations. <b>Unsecured Nonpriority Claim \$ 11,688.75</b> <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority. <b>Unsecured Priority Claim.</b> <input checked="" type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ <b>0.00</b> Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).		3. If court judgment, date obtained:  <b>Secured Claim.</b> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input checked="" type="checkbox"/> Real Estate <input checked="" type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <b>see below*</b> Value of Collateral: \$ <b>see below*</b> *All of debtor(s) right, title and interest to property - 26 U.S.C § 6321. Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ <b>10,150.00</b> <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
5. Total Amount of Claim at Time Case Filed: \$ <b>11,688.75</b> <b>10,150.00</b> <b>21,838.75</b> (unsecured) (secured) (priority) (Total) <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. (except as noted on attachment)		
7. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
8. Date-Stamped Copy: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date <b>07/21/2006</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <b>/s/ MARIA VALERIO Insolvency Specialist</b>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to

THIS SPACE IS FOR COURT USE ONLY



# Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service



**Form 10**  
Attachment

**In the Matter of:** DELPHI CORPORATION  
5725 DELPHI DRIVE  
TROY, MI 48098

Docket Number

05-44481-RDD

Type of Bankruptcy Case

Chapter 11

Date of Petition

10/08/2005

Amendment No. 1 to Proof of Claim dated 06/01/2006

The United States has the right of setoff or counterclaim(s) in the amount of \$10,150.00. The identification of the right of setoff in this amount is based on available data and is not intended to waive or limit the right to setoff against this claim debts owed to this debtor by this or any other federal agency that have not been identified. All rights of setoff are preserved and will be asserted to the extent lawful.

Excise TAX 9/30/05

## Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date Office Location
38-3430473	WT-FICA	06/30/2005	09/05/2005	\$0.00	\$10,150.00	\$0.00	Right to setoff

**Total Amount of Secured Claims: \$10,150.00**

## Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
38-3430473	WT-FICA	06/30/2005	09/05/2005	\$0.00	\$0.00

**Total Amount of Unsecured Priority Claims: \$0.00**

## Unsecured General Claims

Penalty to date of petition on unsecured priority claims (including interest thereon) . . . . . \$11,688.75

**Total Amount of Unsecured General Claims: \$11,688.75**



INTERNAL REVENUE SERVICE  
290 BROADWAY, 5TH FL  
NEW YORK, NY 10007

ROBERT D. DRAIN  
U.S. BANKRUPTCY COURT  
ONE BOWLING GREEN  
NEW YORK, NY 10004-1408

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**Please Fold Here. Do not detach.** Please be sure our address shows through the envelope window.

Internal Revenue Service  
INTERNAL REVENUE SERVICE  
290 BROADWAY, 5TH FL  
NEW YORK, NY 10007

**Exhibit 11**  
**Claim No. 14259**

**FORM B10** (Official Form 10)(10/05)

<b>UNITED STATES BANKRUPTCY COURT</b> <u>SOUTHERN</u> <b>DISTRICT OF</b> <u>NEW YORK</u>		<b>PROOF OF CLAIM</b>
Name of Debtor <b>DELPHI CORPORATION</b>		Case Number <b>05-44481-RDD</b>
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>		Claim #14259 USBC SDNY Delphi Corporation, et al. 05-44481 (RDD)  <div style="font-size: 1.5em; font-weight: bold;">Received</div> <div style="font-size: 1.2em;">AUG 09 2006</div> <div style="font-weight: bold;">Kurtzman Carson</div> <small>THIS SPACE IS FOR COURT USE ONLY</small>
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>Department of the Treasury - Internal Revenue Service</b>		
Name and address where notices should be sent: <b>Internal Revenue Service INTERNAL REVENUE SERVICE 290 BROADWAY, 5TH FL NEW YORK, NY 10007</b>		
Telephone number: <b>(212) 436-1038</b> Creditor #:		
Last four digits of account or other number by which creditor identifies debtor: <b>see attachment</b>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.  <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other _____		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed from _____ to _____ <div style="text-align: center;">(date) (date)</div>
<b>2. Date debt was incurred:</b> <b>see attachment</b>		<b>3. If court judgment, date obtained:</b>
<b>4. Classification of Claim.</b> Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations.		
<b>Unsecured Nonpriority Claim</b> \$ <u>11,688.75</u> <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		<b>Secured Claim.</b> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input checked="" type="checkbox"/> Real Estate <input checked="" type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <u>see below*</u>  Value of Collateral: \$ <u>see below*</u> <small>* All of debtor(s) right, title and interest to property - 26 U.S.C. § 6321.</small> Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ <u>10,150.00</u>
<b>Unsecured Priority Claim.</b> <input checked="" type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority.  Amount entitled to priority \$ <u>0.00</u>  Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).		<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).  <small>*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
<b>5. Total Amount of Claim at Time Case Filed:</b> \$ <u>11,688.75</u> <u>10,150.00</u> <u>21,838.75</u> <div style="text-align: center;">(unsecured) (secured) (priority) (Total)</div>		
<input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>6. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. (except as noted on attachment)		THIS SPACE IS FOR COURT USE ONLY  <div style="font-size: 2em; font-weight: bold; border: 1px solid black; padding: 5px;">RECEIVED</div> <div style="font-size: 1.2em;">JUL 21 2006</div> CLAIMS PROCESSING CENTER USBC SDNY
<b>7. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>8. Date-Stamped Copy:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date <b>07/21/2006</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>/s/ MARIA J. VALERIO/ Insolvency Specialist</u>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for



# Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service



Form 10  
Attachment

In the Matter of: DELPHI CORPORATION  
5725 DELPHI DRIVE  
TROY, MI 48098

Docket Number

05-44481-RDD

Type of Bankruptcy Case

Chapter 11

Date of Petition

10/08/2005

Amendment No. 1 to Proof of Claim dated 06/01/2006

The United States has the right of setoff or counterclaim(s) in the amount of \$10,150.00. The identification of the right of setoff in this amount is based on available data and is not intended to waive or limit the right to setoff against this claim debts owed to this debtor by this or any other federal agency that have not been identified. All rights of setoff are preserved and will be asserted to the extent lawful.

Excise Tax 9/30/05

## Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date Office Location
38-3430473	WT-FICA	06/30/2005	09/05/2005	\$0.00	\$10,150.00	\$0.00	Right to setoff

Total Amount of Secured Claims:

**\$10,150.00**

## Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
38-3430473	WT-FICA	06/30/2005	09/05/2005	\$0.00	\$0.00

Total Amount of Unsecured Priority Claims:

**\$0.00**

## Unsecured General Claims

Penalty to date of petition on unsecured priority claims (including interest thereon) . . . . . \$11,688.75

Total Amount of Unsecured General Claims:

**\$11,688.75**

**Exhibit 12**  
**Claim No. 2445**



original

FORM B10 (Official Form 10) (Rev. 4/01)

<b>United States Bankruptcy Court Southern District of New York</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: DELPHI CORPORATION		Case Number: 05-44481
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		Claim #02445 USBC SDNY Delphi Corporation, et al. 05-44481 (RDD)
Name of Creditor (The person or other entity to whom the debtor owes money or property): U.S. SECURITIES AND EXCHANGE COMMISSION		<div style="border: 1px solid black; padding: 10px; margin: 0 auto; width: 150px;"> <b>RECEIVED</b>   <b>APR 03 2006</b>   <b>KURTZMAN CARSON</b>   <small>This space is for Court Use Only</small> </div>
Name and address where notices should be sent: 3 WORLD FINANCIAL CENTER NEW YORK, NEW YORK 10281 ATTN: BANKRUPTCY GROUP		
Telephone number: (212) 336-0095		
Account or other number by which creditor identifies debtor:		Check here <input type="checkbox"/> replaces <input type="checkbox"/> amends a previously filed claim, dated: _____ if this claim
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other: Disgorgement and civil penalties arising from possible violations of federal securities laws (see attachment A)		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (Fill out below)  Your SS#: _____ - _____ - _____  Unpaid compensation for services performed from _____ (date) to _____ (date)
<b>2. Date debt was incurred: Various.</b>		<b>3. If court judgment, date obtained:</b>
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ Undetermined If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff).  Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____  Value of Collateral: \$ _____  Amount of arrearage and other charges at time case filed included in secured claim, if any \$ _____		<b>6. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other Specify applicable paragraph of 11 U.S.C. § 507(a) _____ <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment</small>
<b>7. CREDITS:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. <b>8. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. <b>9. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		This Space is for Court Use Only   <div style="border: 1px solid black; padding: 5px; margin: 0 auto; width: 150px;">           JUN 10 2008            9 3 A 91 MAR 2008            U.S. BANKRUPTCY COURT            S.D. OF N.Y.         </div>
Date 3-16-06 Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): Neal Jacobson, Senior Trial Counsel, U.S. Securities & Exchange Commission		
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571		



054448106031600000000052

Attachment "A"

This claim is an undetermined claim for penalties, disgorgement, and prejudgment interest arising from possible violations of the federal securities laws. The Securities and Exchange Commission ("SEC") has been investigating pre-bankruptcy activities and transactions involving Delphi Corporation, and may file a civil action against the debtor in the appropriate court, where its claim would be determined in a final amount.

The SEC reserves the right to amend and supplement this claim as appropriate under the circumstances.